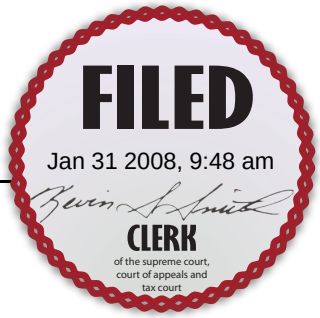
ATTORNEY FOR APPELLANT:

HAROLD E. AMSTUTZ
Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana



IN THE COURT OF APPEALS OF INDIANA

JEFFREY JOHN DAWSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A05-0705-CR-282
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas A. Busch, Judge
Cause No. 79D02-0607-FC-70

January 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Jeffrey John Dawson agreed to plead guilty but mentally ill to intimidation as a Class C felony[1] and intimidation as a Class D felony.[2] In exchange, the State would dismiss a charge of criminal recklessness, the State would not seek an habitual offender enhancement, and Dawson's total executed sentence would not exceed eight years. Dawson was sentenced to eight years for the Class C felony and three years for the Class D felony, with the sentences to be served consecutively. Three years of Dawson's sentence were suspended to probation.

Dawson appeals the sentences, arguing the trial court improperly found and weighed the aggravating and mitigating circumstances and the trial court should not have imposed consecutive sentences.

We affirm.

DISCUSSION AND DECISION

We engage in a three-step process when evaluating a sentence under the current advisory sentencing scheme. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007). First, we review whether the sentencing statement includes "reasonably detailed reasons or circumstances for imposing a particular sentence." *Id.* Second, we review for an abuse of discretion the reasons or omission of reasons for choosing a sentence. *Id.* The weight given to those reasons, *i.e*. to particular aggravators or mitigators, is not subject to appellate review. *Id.* Third, we review the sentence for appropriateness under Indiana Appellate Rule 7(B). *Id.*

[1] Ind. Code § 35-45-2-1(b)(2).

[2] Ind. Code § 35-45-2-1(b)(1)(A).

The trial court found as aggravators Dawson's criminal history, the nature and circumstances of the crime, and his need for correctional and rehabilitative treatment best provided by commitment to a penal facility. It found Dawson's mental illness was a mitigating factor and determined the aggravating circumstances outweighed the mitigating circumstance.

Dawson argues the trial court "improperly exercised its discretion in the finding and balancing of aggravated and mitigating circumstances." (Br. of Appellant at 5.) Specifically, he challenges the findings as aggravating circumstances the nature and circumstances of the crime and that his need of rehabilitative treatment that can best be provided by commitment to a penal facility.[3]

A trial court may properly consider the particularized circumstances of an offense when enhancing a sentence. *See Buchanan v. State*, 767 N.E.2d 967, 971 (Ind. 2002). Dawson and his Mother were arguing, and Dawson became enraged when his neighbor, Robert Stafford, began to pound on a wall that separated his residence from Dawson's. Dawson went outside and yelled at Stafford, "Come out here and I'll fucking kill you."

[3] Dawson does not argue the trial court erred in finding his criminal history an aggravating circumstance. Dawson had nine felony convictions for offenses including assault, carrying a dangerous weapon, robbery, burglary, larceny, and narcotics possession. He had ten misdemeanor convictions for offenses including assault, battery, intimidation, and interfering/resisting arrest. A sentence enhancement may be proper in light of a defendant's criminal history alone, though the significance of a criminal history varies based on the gravity, nature and number of prior offenses as they relate to the current offense. *Stewart v. State*, 840 N.E.2d 859, 864 (Ind. Ct. App. 2006).

Dawson's counsel included Dawson's presentence investigation report on white paper in his appendix. App. R. 9(J) requires documents and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) be filed in accordance with Trial Rule 5(G). Presentence reports are excluded from public access and are confidential. Counsel's inclusion of the presentence investigation report on white paper in the appendix is therefore inconsistent with Trial Rule 5(G), which requires such documents be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential." *Hamed v. State*, 852 N.E.2d 619, 621 (Ind. Ct. App. 2006).

(Appellant's App. at 7-8.) A passerby, Aimee Martinez, asked Dawson what was going on, and he raised an eight inch knife and told Martinez he would "fucking kill" her by stabbing her if she did not leave. (*Id.)* The trial court found Dawson acted violently despite being treated for mental illness. We cannot say the trial court abused its discretion in finding the nature and circumstances of Dawson's crime an aggravating circumstance in light of Dawson's actions, which occurred after Dawson's mental illness had been diagnosed and treated.

The trial court improperly found as an aggravator Dawson's need for rehabilitative treatment that can best be provided by commitment to a penal facility, as that aggravator is derivative of Dawson's criminal history. *Williams v. State*, 838 N.E.2d 1019, 1021 (Ind. 2005). But only one valid aggravating circumstance is necessary to support an enhanced sentence, *Johnson v. State*, 725 N.E.2d 864, 868 (Ind. 2000); given Dawson's extensive criminal history and the nature and circumstances of his crimes, we cannot say the trial court erred in finding those were proper aggravating circumstances.

Dawson also argues the trial court did not give his mental health problems sufficient mitigating weight and erred in not finding his guilty plea a mitigating circumstance. A trial court is not required to find a guilty plea a mitigating circumstance when the defendant receives a substantial benefit from the plea agreement. *See Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). The State agreed to dismiss a count of Class D felony criminal recklessness in exchange for Dawson's plea, and the State refrained from filing an habitual offender enhancement. Dawson received a substantial benefit from his plea agreement.

As for Dawson's argument the trial court did not provide sufficient weight to his mental health history, we note the relative weight the trial court assigns to mitigating circumstances is not subject to our review. *Anglemyer*, 868 N.E.2d at 491.

Dawson next argues the trial court improperly ordered his sentences be served consecutively. He contends his convictions arose out of a single episode of criminal conduct, for which Ind. Code § 35-50-1-2 prohibits consecutive sentences.

An "episode" is "an occurrence or connected series of occurrences and developments that may be viewed as distinctive and apart although part of a larger or more comprehensive series." *Cole v. State*, 850 N.E.2d 417, 419 (Ind. Ct. App. 2006). In determining whether an episode is "single," we consider whether the alleged conduct was so closely related in time, place, and circumstance that a complete account of one charge cannot be related without referring to details of the other charge. *Id.*

Dawson's intimidation of Stafford can be completely separated from his intimidation of Martinez. Dawson's victims were in different locations, and he threatened them at different times. His convictions therefore did not arise out of a single episode of criminal conduct.

The trial court did not err in sentencing Dawson.

Affirmed.

KIRSCH, J., and RILEY, J., concur.