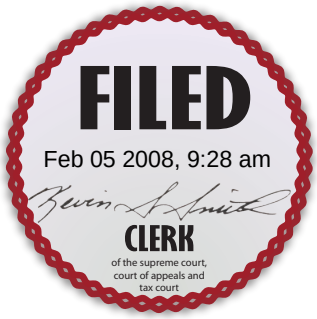

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IN THE
COURT OF APPEALS OF INDIANA

MARKUS S. SINGLETON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 46A03-0706-CR-283
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LA PORTE SUPERIOR COURT
The Honorable Kathleen Lang, Judge
Cause No. 46D01-0504-MR-36

February 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Markus S. Singleton appeals the sentence he received following his conviction of Murder,[1] which was entered upon his guilty plea. Singleton presents the following restated issues for review:

1. Did the trial court err in identifying aggravating and mitigating circumstances, and in imposing the advisory sentence for murder when the State stipulated there were no statutory aggravating circumstances?

2. Was Singleton's sentence appropriate in view of his character and the nature of the offense of which he was convicted?

We affirm.

The facts favorable to the conviction are that on April 11, 2005, Katranis Miles gave Singleton, who was seventeen years old at the time, a semi-automatic handgun. Singleton took the handgun and went to visit sixteen-year-old Corey Jackson. Jackson and Singleton walked around the area for a while, then Singleton stated that he did not want to walk home, so he was going to "jack" somebody for a ride. *Transcript* at 25. At some point thereafter, the two men saw Philip Lanier standing in the front yard of a nearby residence. Singleton "rushed" up to Lanier and demanded the keys to Lanier's car. *Id*. Lanier handed the keys to Singleton, who tossed them to Jackson. At that moment, a car drove toward them, its headlights illuminating the scene. Jackson became frightened and took off running down an alley toward his house. While running through the alley, he tossed the keys away. Singleton forced Lanier to walk to a nearby cemetery.

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[1] Ind. Code Ann. § 35-42-1-1 (West, PREMISE through 2007 1st Regular Sess.).

Once there, Singleton shot and killed Lanier. Singleton threw the gun aside and ran to Jackson's house. When he arrived there, Singleton told Jackson what he had done. He then told Jackson he wanted to return to the cemetery and retrieve the gun. The two returned to the cemetery, where Jackson observed Lanier's body lying face down. While he was looking at the body, Jackson heard the sound of a bullet being chambered behind him. He took off running toward his residence and then heard the sound of a gunshot, after which Singleton rejoined him and the two ran back to Jackson's house. Jackson later took the gun from Singleton and returned it to Miles.

Someone discovered Lanier's body the next morning and called police. Later that day, police received a phone call from an anonymous female informing them that Singleton had been involved in the shooting. Police traced that phone call to a residence and spoke with a seventeen-year-old girl who lived there. That interview led to interviews with approximately ten other people, including Miles. Miles informed police he had given Singleton a handgun on April 11. Police also learned about Jackson and asked him to come to the police station for an interview. Jackson complied and gave a statement detailing what he knew about the events of that evening, as set out previously. Singleton was then asked to come to the station for questioning and he complied. Singleton's account of the events of April 11 was consistent with Jackson's account, except Singleton essentially reversed his and Jackson's roles in the shooting. Aside from reversing his and Jackson's respective roles in Lanier's murder, the major difference between their stories was that Singleton claimed he heard two gunshots when he returned

to the cemetery with Jackson. Police noted that Jackson's claim of hearing one gunshot after returning to the cemetery was consistent with the physical evidence, while Singleton's claim of hearing two shots at that point was not.

Singleton was eventually charged with murder, felony murder, and class-A felony robbery. Singleton pled guilty to murder, in exchange for which the State dismissed the other charges. The plea agreement left sentencing to the trial court's discretion, but capped it to a maximum of fifty-five years. The trial court imposed a fifty-five year sentence. Singleton challenges his sentence.

When evaluating certain sentencing challenges under the advisory sentencing scheme under *Anglemeyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218, we first confirm that the trial court issued the required sentencing statement that included "reasonably detailed reasons or circumstances for imposing a particular sentence." *Id*. at 491. Second, the reasons or omission of reasons given for choosing a sentence are subject to review on appeal for an abuse of discretion. *Anglemeyer v. State*, 868 N.E.2d 482. We note that the weight given to those reasons, *i.e.*, to particular aggravators or mitigators, is not subject to appellate review. *Id*. Finally, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). *Id*. Even if a trial court abuses its discretion by not issuing a reasonably detailed sentencing statement or in its statement concerning aggravators and mitigators, we may choose to review the appropriateness of a sentence under Rule 7(B) instead of remanding to the trial court. *Id*.

1.

Singleton first contends the trial court erred in citing the circumstances of the crime as an aggravating circumstance, and in failing to find his guilty plea as a significant mitigator.

We begin with the trial court's failure to cite Singleton's guilty plea as a mitigator. To support an allegation that the trial court failed to identify or find a mitigating factor, the defendant must establish that the mitigating evidence was both significant and clearly supported by the record. *Matshazi v. State*, 804 N.E.2d 1232 (Ind. Ct. App. 2004), *trans. denied*. It is well established that a defendant who pleads guilty deserves to have some mitigating weight extended to the guilty plea in return. *See Cotto v. State*, 829 N.E.2d 520 (Ind. 2005). Although a trial court should make some acknowledgment of a guilty plea when sentencing a defendant, the extent to which a guilty plea is mitigating will vary from case to case. *See Hope v. State*, 834 N.E.2d 713 (Ind. Ct. App. 2005). As has been frequently observed, "a plea is not necessarily a significant mitigating factor." *Cotto v. State*, 829 N.E.2d at 525; *see also Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one"), *trans. denied*.

Singleton clearly received benefits in return for his guilty plea. The State dismissed two charges, at least one of which could have been entered against Singleton in addition to the murder charge without violating double jeopardy principles. Moreover,

the evidence of Singleton's guilt was substantial. Thus, although the plea did indeed save time and expense for the State, the trial court would be justified in determining that the decision to plead guilty appears to have been to a large extent pragmatic, and thus entitled to minimal mitigating weight. The failure to cite the guilty plea as a mitigator therefore did not impact Singleton's sentence.

Singleton contends the trial court erred in citing the circumstances of the crime as an aggravator. Singleton contends this was improper here because the trial court merely recited the circumstances of the crime. To the contrary, the basis of finding the circumstances of the crime as an aggravating factor is both apparent and proper. The court stated, "the defendant *randomly chose the victim* who was standing outside of his home …." *Transcript* at 91 (emphasis supplied). A trial court may properly find that the nature and circumstances of the crime is an aggravating circumstance based upon the fact that the crime was committed against a random victim. *Roney v. State,* 872 N.E.2d 192 (Ind. Ct. App. 2007); *see also Henson v. State,* 707 N.E.2d 792, 795 (Ind. 1999) (the trial court properly considered the aggravating circumstance "that … the victim was a defenseless victim of a random car jacking"); *Sherwood v. State,* 702 N.E.2d 694 (Ind. 1998) (the trial court properly found as aggravating circumstance that crime was heinous, where defendant and his companions robbed a random man who was washing his car). The trial court did not err in finding this aggravating circumstance.

The main thrust of Singleton's argument in this regard is that the trial court erred in sentencing him to the maximum sentence allowed under the terms of the plea

agreement because "[a]s a general proposition, maximum sentences are generally reserved for the worst offender and the worst offenses" and "[n]othing in the record suggests that Singleton was the worst offender or that this was the worst offense." *Appellant's Brief* at 4. We observe initially that this maxim should not be taken literally; we should not sentence by comparison. Instead, we "concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character." *Brown v. State*, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), *trans. denied*. Moreover, and more importantly here, it applies only where the sentence imposed is the maximum allowable by statute. That was not the case here, as Singleton received only the maximum sentence allowable *under the plea agreement*, which was less than the maximum sentence allowed by statute. In fact, Singleton received the advisory sentence for murder, and therefore any argument pertaining to maximum sentences is misplaced.

2.

Singleton contends his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review

and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*.

Singleton was seventeen years old when he committed this crime. By that time, he had several true findings of juvenile delinquency entered against him, including true findings for battery, disorderly conduct, and battery with injury. On the evening in question, Singleton chose a random victim, marched him to a cemetery at gunpoint, and shot him dead in cold blood. Singleton returned to the scene a few minutes later and shot the victim again. Under these circumstances, the advisory fifty-five-year sentence was not inappropriate.

Judgment affirmed.

ROBB, J., and MATHIAS, J., concur.