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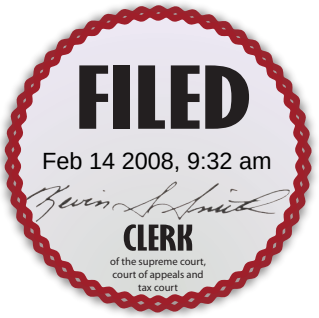

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IN THE
COURT OF APPEALS OF INDIANA

RONALD HEINY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0706-CR-506
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Stanley Kroh, Judge Pro Tempore
Cause No. 49F18-0701-FD-3509

February 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Ronald Heiny appeals his sentence for auto theft as a class D felony,[1] resisting law enforcement as a class D felony,[2] and resisting law enforcement as a class A misdemeanor.[3] Heiny raises two issues, which we revise and restate as:

I. Whether the trial court abused its discretion in sentencing him; and

II. Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On January 7, 2007, Heiny knowingly exerted unauthorized control over a motor vehicle belonging to Bang Kim with the intent to deprive Kim of the motor vehicle's value or use. On the same day, while Heiny was operating that vehicle, he knowingly fled from Indianapolis Police Officer Scott Johnson after Officer Johnson identified himself by visible or audible means and ordered Heiny to stop. Later, Heiny knowingly fled from Officer Johnson on foot.

On January 9, 2007, the State charged Heiny with auto theft as a class D felony, resisting law enforcement as a class D felony, and resisting law enforcement as a class A misdemeanor. At a hearing on March 15, 2007, Heiny pleaded guilty to the charges, and, in exchange, the State agreed not to file an habitual offender enhancement. The plea agreement left the sentencing to the trial court's discretion.

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[1] Ind. Code § 35-43-4-2.5 (2004).

[2] Ind. Code § 35-44-3-3 (Supp. 2006).

[3] Ind. Code § 35-44-3-3 (Supp. 2006).

Heiny asked the trial court to consider his acceptance of responsibility for the crime as a mitigating factor. The trial court found Heiny's criminal history and the nature of the offense to be aggravating factors and Heiny's young age to be a mitigating factor. The trial court sentenced Heiny to three years for auto theft as a class D felony, three years for resisting law enforcement as a class D felony, and one year for resisting law enforcement as a class A misdemeanor, and ordered the sentences to be served concurrently. Thus, Heiny received a sentence of three years in the Indiana Department of Correction. On March 28, 2007, Heiny filed a Motion to Reconsider Sentence, which the trial court denied.

We note that Heiny's offenses were committed after the April 25, 2005, revisions of the sentencing scheme. In clarifying these revisions, the Indiana Supreme Court has held that "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (Ind. 2007). The reasons given, and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion. Id. The relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse of discretion. Id. Remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record. Id.

I.

The first issue is whether the trial court abused its discretion in sentencing Heiny. Heiny argues that the trial court abused its discretion because it failed to consider a mitigating factor arguably supported by the record, namely, his guilty plea and acceptance of responsibility. A defendant who pleads guilty deserves to have "some" mitigating weight given to the plea in return. Anglemyer v. State, 875 N.E.2d 218, 220 (Ind. 2007) (quoting McElroy v. State, 865 N.E.2d 584, 591 (Ind. 2007)). However, an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant. Id. at 220-221 (citing Anglemyer, 868 N.E.2d at 490-91). The significance of a guilty plea as a mitigating factor varies from case to case. Id. at 221 (citing Francis v. State, 817 N.E.2d 235, 238 n.3 (Ind. 2004)). For example, a guilty plea may not be significantly mitigating when the defendant receives a substantial benefit in return for the plea. Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999).

Here, in addition to his juvenile record, Heiny has previous adult convictions for burglary as a class B felony and escape as a class D felony. Ind. Code § 35-50-2-8(a) provides that the State "may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions." Ind. Code § 35-50-2-8(h) provides that the court "shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense."

Thus, Heiny faced a possible sentence enhancement of one and one-half to four and one-half years as an habitual offender. In exchange for Heiny's guilty plea, however, the State agreed not to file the habitual offender enhancement. We conclude that Heiny's guilty plea is not significantly mitigating because, when the State agreed not to file an habitual offender enhancement, Heiny received a substantial benefit in return. Accordingly, we cannot say that the trial court abused its discretion by failing to give his guilty plea substantial mitigating weight. See Sensback, 720 N.E.2d at 1165.

II.

The next issue is whether Heiny's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that Heiny knowingly exerted unauthorized control over a motor vehicle belonging to Kim with the intent to deprive Kim of the motor vehicle's value or use. While Heiny was operating a vehicle, he knowingly fled from a police officer after the officer identified himself by visible or audible means and ordered Heiny to stop. Later, Heiny knowingly fled from the officer on foot.

Our review of the character of the offender reveals that, as a juvenile, Heiny had true findings for theft, auto theft, and intimidation. As an adult, Heiny has been convicted of burglary as a class B felony and escape as a class D felony. He pleaded guilty to the present offense, and, in exchange, the State agreed not to file an habitual offender enhancement.

After due consideration of the trial court's decision, we cannot say that the sentence of three years imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Shouse v. State, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006) (holding that defendant's sentence for auto theft and two counts of resisting law enforcement was not inappropriate given his extensive criminal history), trans. denied.

For the foregoing reasons, we affirm Heiny's sentence for auto theft as a class D felony, resisting law enforcement as a class D felony, and resisting law enforcement as a class A misdemeanor.

Affirmed.

BARNES, J. and VAIDIK, J. concur