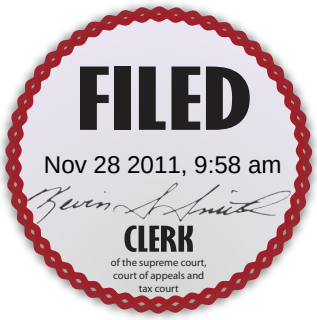
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

PHILIP R. TERRILL
Deputy Public Defender
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

J. T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MARSEAN SHINES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-1105-CR-237
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D06-1011-FD-1178

November 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Marsean Shines appeals his sentence for class D felony domestic battery,[1] class D felony criminal confinement,[2] and class B misdemeanor false informing,[3] and his habitual offender enhancement.[4]

We affirm.

ISSUE

Whether the trial court erred in sentencing Shines.

FACTS

On November 16, 2010, Shines was living with his girlfriend, Amanda Crousore, and her three children, who were ages four, three, and two. That day around 2:00 p.m., after Crousore got off work, she went to Shines's brother's house, where she found Shines smelling of alcohol and "passed out on the couch." (Trial Tr. 88). Around 5:00 p.m., Shines went to Crousore's house, told her he was upset that she left him at his brother's house, and then left her house.

Later that evening, as Crousore and her children were sleeping, Shines returned to Crousore's house and began beating on the front door for Crousore to let him in the house. From her upstairs bedroom window, Crousore told Shines that she would not let him in and that his brother could come the following day to pick up Shines's belongings.

---

[1] Ind. Code § 35-42-2-1.3(b)(2).

[2] I.C. § 35-42-3-3.

[3] I.C. § 35-44-2-2.

[4] I.C. § 35-50-2-8.

Shines continued beating on the front door and eventually kicked in the door, which was near the couch where Crousore's four-year-old daughter was sleeping. Shines next went upstairs, entered Crousore's bedroom, dragged Crousore off the bed by her feet, hit her multiple times in her face with his fists, and pulled her hair. Crousore opened the bedroom window to yell for help, and Shines shut the window and held her by her arms to prevent her from leaving the bedroom. They then went into the bathroom, and Shines again hit Crousore and would not let her get away. At some point, Crousore was able to get away from Shines and had "finally made it, probably half way down the stairs[,]" when Shines "drug [her] back up the stairs." (Trial Tr. 91).

Thereafter, Shines's brother arrived at Crousore's house and tried to pull Shines off Crousore. Once Shines's brother was able to restrain Shines, Crousore ran across the street to a neighbor's house. As Crousore grabbed the neighbor's door, Shines pulled her by her hair, hit her in the face with a book bag, and dragged her back into her house as she screamed for help. One of Crousore's neighbors saw Shines hitting Crousore, heard Crousore's children screaming, and called the police. Once police arrived, Shines told Officer Heather Hoffman that "there had been a battery that occurred, that he had helped chase off the perpetrator and that he was now there to help take care of [Crousore]." (Trial Tr. 123). When Officer Hoffman asked Shines for his identification, he told the officer that his name was Gregory Ivey and again said that he had chased off the perpetrator. After the police were unable to verify Shines's identification and took him outside, Crousore told Officer Hoffman that Shines was the person who had battered her.

The State charged Shines with Count I, class D felony domestic battery; Count II, class D felony criminal confinement; and Count III, class B misdemeanor false informing and alleged that he was an habitual offender. The trial court held a jury trial in March 2011. During the trial, Crousore testified that she initially did not tell the police that Shines had hit her because she "felt like [she] had to save him" and "had to try to do something to get him out of it." (Trial Tr. 96). The jury found Shines guilty as charged.

At the sentencing hearing, Shines's counsel stated that Crousore was not at the sentencing hearing but that she "informed [counsel] that she wanted to ask for leniency." (Sentencing Tr. 5). Shines's counsel requested that the trial court sentence Shines to an aggregate term of four years (specifically, concurrent terms of two years on Counts I and II, 180 days on Count III, and two years for his habitual offender enhancement) while the State requested that Shines receive a seven-year aggregate sentence. The trial court found Shines's criminal history to be an aggravator and imposed concurrent sentences of two years on Count I enhanced by four years for his habitual offender status; two years on Count II; and 180 days for Count III. Thus, the trial court sentenced Shines to an aggregate term of six years.

DECISION

Shines argues that the trial court erred in sentencing him. Specifically, Shines contends that: (a) the trial court failed to consider certain mitigators; and (b) his sentence is inappropriate.

a. *Mitigators*

Shines argues that the trial court erred by failing to find his age of twenty-four and his "difficult childhood" as mitigating circumstances. Shines's Br. at 12.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only 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 (Ind. 2007). One way in which a court may abuse its discretion is by entering a sentencing statement that omits mitigating circumstances that are clearly supported by the record and advanced for consideration. *Id.* at 490–91. However, a trial court is not obligated to accept a defendant's claim as to what constitutes a mitigating circumstance. *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000). A claim that the trial court failed to find a mitigating circumstance requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Anglemyer*, 868 N.E.2d at 493.

During the sentencing hearing, neither Shines nor Shines's counsel offered Shines's age or childhood as mitigators for the trial court's consideration. Indeed, they did not proffer any mitigating circumstances at all. Shine did not make any sort of statement at the sentencing hearing, and Shines's counsel merely requested the trial court to sentence Shines to an aggregate sentence of four years and noted that Crousore, who was not present at the sentencing hearing, "wanted to ask for leniency." (Sentencing Tr. 5). Therefore, Shines has waived any argument regarding these mitigators on appeal. *Pennington v. State*, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005) ("A defendant who fails to

raise proposed mitigators at the trial court level is precluded from advancing them for the first time on appeal.").

Waiver notwithstanding, Shines contends that the trial court should have considered these mitigators because the court was "inherently aware" of them. Shines's Br. at 11 (citing *Francis v. State*, 817 N.E.2d 235, 237 (Ind. 2004)). Nevertheless, Shines's argument still fails. Shine merely states that the trial court overlooked his age and failed to acknowledge the PSI entry containing Shines's self-report that he had "a fair childhood, suffering from physical, mental, emotional and verbal abuse from people in his school, his neighborhood, and his family." (App. 5). Shines has failed to meet his burden of showing that these alleged mitigators were both significant and clearly supported in the record. *See Anglemyer*, 868 N.E.2d at 493.

b. *Inappropriate sentence*

Shines argues that his six-year sentence was inappropriate. The trial court sentenced Shines to the sentence he requested for each of his convictions (concurrent terms of two years for each of his class D felonies and 180 days for his class B misdemeanor) but did not impose the habitual offender sentencing enhancement Shines had requested (four years instead of Shines's request of two years). Thus, Shines suggests that his sentence was inappropriate because the trial court imposed a four-year habitual offender enhancement.

We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d

1073, 1080 (Ind. 2006). The principal role of a Rule 7(B) review "should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell v. State,* 895 N.E.2d 1219, 1225 (Ind. 2008). We "should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." *Id.*

In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress*, 848 N.E.2d at 1081. The sentencing range for a class D felony is between six months and three years, with the advisory sentence being one and one-half years. I.C. § 35-50-2-7. The maximum sentence for a class B misdemeanor is "not more than" 180 days. Ind. Code § 35-50-3-3. As Shines's habitual offender enhancement was attached to one of his class D felony convictions, the sentencing range for the habitual offender enhancement in this case was between one and one-half years and four and one-half years (not less than the advisory sentence for the underlying class D felony and not more than three times the advisory sentence for the underlying class D felony). *See* Ind. Code § 35-50-2-8(h).

Regarding Shines's offenses, Shines concedes that they were "egregious acts," but he then attempts to downplay the egregiousness of his actions based on Crousore's failure to submit a victim impact statement and to attend the sentencing hearing and on his report that she wanted leniency for him. Shines's Br. at 15.

We cannot agree. The record reveals that, after kicking in the door of a residence where very young children were living, Shines repeatedly beat Crousore in the face with his fists, pulled her hair, dragged her around her house, and tried to prevent her from getting help. A neighbor who went outside to get Crousore's address to call police testified that she could hear hitting and screaming from inside Crousore's house. Even after Shines's own brother struggled to restrain him, Shines still would not let Crousore alone. Just as Crousore thought she had found refuge at a neighbor's door, Shines grabbed her by the hair, hit in the face with a book bag, and dragged her back across the street to her house as she screamed for help. Shines's actions against Crousore are all the more egregious given the fact that Crousore's young children, ages four, three, and two, were in the house while Shines was beating their mother. Indeed, Crousore's neighbor testified that she heard Crousore's children screaming before police arrived, and Officer Hoffman testified that Crousore's four-year-old daughter saw and heard what happened to her mother. Despite the fact that Shines had just beat his girlfriend senseless, he stayed at the scene, lied to police, and tried to present himself as the hero who saved the damsel in distress. Given the nature of Shines's offenses, we cannot say that his sentence was inappropriate.

As to Shines's character, he has a criminal history consisting of felony convictions in Illinois for armed robbery without a weapon in 2005 and second degree robbery in 2009—for which he was on parole at the time he committed the current offenses—and a misdemeanor conviction in Illinois for reckless conduct in 2010. He has also accumulated a history of arrests in Illinois for battery causing bodily harm, battery,

aggravated assault, aggravated battery with a weapon, possession of a controlled substance, criminal trespass, and burglary. Additionally, the PSI indicates Shines neither completed high school nor earned a GED; never had a job; supported himself by selling drugs; used marijuana daily since the age of thirteen; and consumed alcohol every other day since the age of fifteen. His history of criminal activity and arrests and his admitted illegal drug use indicate nothing but a disregard for the law.

Shines has not persuaded us that that his aggregate sentence of six years for the commission of class D felony domestic battery, class D felony criminal confinement, class B misdemeanor false informing, and being an habitual offender is inappropriate. Therefore, we affirm the trial court's sentence.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.