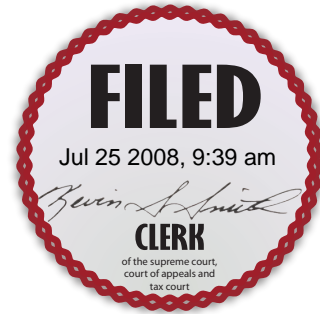


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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MATTHEW ADAM JONES, )

Appellant-Defendant, )

vs. )

No. 17A03-0712-CR-552

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE DEKALB SUPERIOR COURT  
The Honorable Kevin P. Wallace, Judge  
Cause No. 17D01-0610-FB-26

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**July 25, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Matthew Adam Jones appeals his sentence for Burglary of a Dwelling, a Class B felony. We affirm.

### **Issues**

Jones raises the following issues on appeal:

- I. Whether the trial court abused its discretion in issuing its sentencing statement or in making findings as to mitigating circumstances; and
- II. Whether his sentence is inappropriate.

### **Facts and Procedural History**

Three times, nineteen-year-old Jones used a ladder to break into C.C.'s home. On the first or second occasion, he took some of her underwear. On the third occasion, Jones was apprehended by someone inside the house. Jones admitted to these acts. Police recovered C.C.'s underwear from Jones' possession.

Jones pled guilty to Burglary of a Dwelling, a Class B felony. In the plea agreement, the State agreed to dismiss another count and recommended a maximum executed term of six years. The trial court sentenced Jones to a ten-year sentence, the advisory term for a Class B felony, with four years suspended. Jones now appeals.

### **Discussion and Decision**

#### **I. Abuse of Discretion**

On appeal, Jones argues that the trial court abused its discretion in sentencing him by: (1) failing to make a sufficient sentencing statement, and (2) failing to consider mitigating factors that were supported by the record. For sentences within the statutory range, we

review the trial court's decision for an abuse of discretion, which occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g by, 875 N.E.2d 218 (Ind. 2007).

#### A. Sentencing Statement

A trial court "shall issue a statement of the court's reasons for selecting the sentence that it imposes." Ind. Code § 35-38-1-1.3. The sentencing statement

must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. If the recitation includes a 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.

Anglemyer, 868 N.E.2d at 490 (emphasis added). Sentencing statements need not contain findings of aggravating and mitigating circumstances. See Mendoza v. State, 869 N.E.2d 546, 555 (Ind. Ct. App. 2007), trans. denied. Only where the sentencing statement includes findings of aggravating and mitigating circumstances must a trial court provide an explanation of those circumstances. See id. at 556.

Here, the trial court made a detailed statement during the sentencing hearing which revealed that the trial court had considered the facts of the case, Jones' background, his proffered mitigators, and the Psychological Assessment performed by James A. Cates, Ph.D. In the trial court's transcribed statement, it noted particular passages and conclusions of the nine-page Psychological Assessment. The trial court stated that "in terms of aggravating and mitigating circumstances, this is the defendant's first offense. But as [the State] has correctly

pointed out, it's a very serious offense.” Transcript at 35. The trial court then sentenced Jones to the advisory, ten-year sentence, suspending four of those years in light of the absence of any “prior criminal history.” Id.

In reviewing sentences, we may examine both the written and oral sentencing statements to discern the trial court’s findings. McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007). Pursuant to Anglemyer, the trial court gave a reasonably detailed statement of its considerations in sentencing Jones. The trial court did not abuse its discretion in issuing its statement.

#### B. Mitigating Factors

Jones asked the trial court to find the following as mitigating circumstances: the absence of a criminal history, his youth (age nineteen at the time of the crime), a learning disability, the fact that he had taken responsibility for his actions, incarceration would interfere with his education, and his concern that counseling might not be available through the Department of Correction.

The trial court may consider the aggravating and mitigating circumstances listed in Indiana Code Section 35-38-1-7.1, as well as any other relevant matters. As Jones himself acknowledges on appeal, the trial court is not obligated to accept the defendant’s arguments as to what constitutes a mitigating factor. Page v. State, 878 N.E.2d 404, 408 (Ind. Ct. App. 2007), trans. denied. A trial court need not explain why it did not find a particular proffered mitigator to be significantly mitigating. Creekmore v. State, 853 N.E.2d 523, 530 (Ind. Ct. App. 2006), clarified on reh’g, 858 N.E.2d 230 (Ind. Ct. App. 2006).

On appeal, Jones challenges the trial court's failure to find several mitigating circumstances. First, while the trial court acknowledged that Jones had no prior criminal history, it was aware that, approximately one month after the instant offense, Jones stole and returned a laptop computer. Second, a defendant's youth is not automatically a significant mitigating circumstance. See Smith v. State, 872 N.E.2d 169, 178 (Ind. Ct. App. 2007), trans. denied; Bryant v. State, 802 N.E.2d 486, 502 (Ind. Ct. App. 2006), trans. denied. When Jones committed this offense, he was nineteen years old and sophisticated enough to wear surgical gloves to avoid identification. Third, Jones asserts that his learning disability should be a mitigating circumstance, yet he graduated from high school and was on the Dean's List at Ivy Tech at the time of his sentencing hearing. Fourth, a guilty plea is not automatically entitled to significant mitigating weight, particularly where the defendant receives a substantial benefit or where his decision to plead guilty is merely a pragmatic one. Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied. Jones admitted to the offense. Police recovered the victim's underwear from his possession. Furthermore, as part of the plea agreement, the State dismissed one count and recommended a maximum executed term of six years. Finally, with respect to Jones' concern that he may not receive the recommended treatment through the Department of Correction, we note that the trial court indicated that it was attaching the Psychological Assessment to its Abstract of Judgment. For these reasons, we conclude that the trial court did not abuse its discretion in making its sentencing statement or in making findings as to mitigating circumstances.

## II. Appellate Rule 7(B)

Jones argues that his sentence is inappropriate. Under Indiana Appellate Rule 7(B), this “Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B); see IND. CONST. art. VII, § 6. A defendant ““must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.”” Anglemyer, 868 N.E.2d at 494 (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As to the nature of the offense, 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. Jones used a ladder to enter C.C.’s home through a window. He wore gloves, presumably to avoid identification. The only things he took were very personal items of clothing. His offense had a significant emotional impact on his victim.

As to Jones’ character, he admittedly broke into C.C.’s home on three different occasions. One month after being arrested, he admittedly committed another offense, but avoided prosecution by promptly returning the stolen item.

The trial court sentenced Jones to the advisory term of ten years, with only six of those years to be executed. See Ind. Code §§ 35-43-2-1(1)(B)(i); and 35-50-2-5. Jones encourages us to revise his sentence to one “with significantly less executed time,” suggesting such “would have been much more appropriate.” Appellant’s Brief at 19. To the contrary, we review whether the sentence ordered by the trial court is inappropriate, rather than determining de novo what sentence would be most appropriate. App. R. 7(B). We decline

Jones' invitation to overstep our discretion. Based upon our review, we conclude that Jones' sentence for Burglary of a Dwelling is not inappropriate.

### **Conclusion**

The trial court did not abuse its discretion in sentencing Jones; nor is his sentence inappropriate.

FRIEDLANDER, J., and KIRSCH, J., concur.