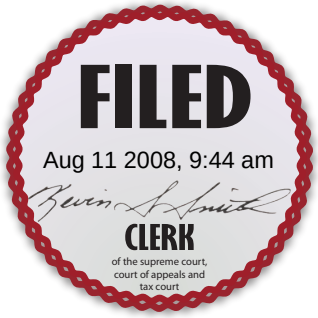

ATTORNEY FOR APPELLANT:

PAUL D. STANKO
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MICHAEL A. DORTCH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0802-CR-93
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Kathleen A. Sullivan, Judge Pro Tempore
Cause No. 45G03-0709-FD-71

August 11, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Michael A. Dortch appeals his convictions for Theft,[1] a class D felony, and Attempted Resisting Law Enforcement,[2] a class D felony. Specifically, Dortch argues that (1) the trial court abused its discretion when it failed to identify his guilty plea as a mitigating factor, and (2) the trial court erred when it imposed consecutive three-year sentences because the offenses were a single episode of criminal conduct. Finding no error, we affirm the judgment of the trial court.

FACTS

On September 19, 2007, employees at a Walgreens store in East Chicago observed Dortch leave the store with what appeared to be boxes protruding through his shirt. The security alarm activated when Dortch exited the store. The store manager confronted Dortch in the parking lot, the two tussled, and Dortch dropped boxes of Claritin that he had hidden under his shirt before quickly entering his vehicle.

East Chicago Police Officer M. Santos observed the struggle and pulled his marked police vehicle directly behind Dortch's vehicle to prevent him from leaving the scene. Officer Santos exited his vehicle, ordered Dortch to stop, and asked Dortch to identify himself. Instead, Dortch shifted his vehicle into reverse and backed into Officer Santos's vehicle several times in an attempt to flee. Officer Santos fired several gunshots into the rear driver's side area of Dortch's vehicle. Dortch eventually stopped his car and was subsequently arrested.

---

[1] Ind. Code § 35-43-4-2.

[2] Ind. Code §§ 35-44-3-3, 35-41-5-1.

On September 20, 2007, the State charged Dortch with class D felony theft, class D felony attempted resisting law enforcement, and two counts of class D felony criminal recklessness. On November 20, 2007, the State alleged Dortch to be a habitual offender. On January 15, 2008, Dortch pleaded guilty to class D felony theft and class D felony attempted resisting law enforcement. As a result of the plea agreement, the State agreed to dismiss the remaining charges. The plea agreement left sentencing to the discretion of the trial court. After a sentencing hearing, the trial court found no mitigating circumstances and found Dortch's extensive criminal history, that he was eligible to be charged as a habitual offender, and that he was on parole at the time of the underlying offense to be aggravating circumstances. The trial court sentenced Dortch to three years imprisonment for each count and ordered the sentences to be served consecutively, for an aggregate term of six years of imprisonment. Dortch now appeals.

DISCUSSION AND DECISION

I. Guilty Plea

Dortch argues that the trial court abused its discretion by not finding his guilty plea to be a mitigating circumstance. We review challenges to the trial court's sentencing process 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). While a trial court must enter a sentencing statement whenever imposing a felony conviction, sentencing statements are not required to contain a finding of aggravators or mitigators. Anglemyer, 868 N.E.2d at 490. Rather, they need include only a "reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." Id. If the statement does, however, include

a finding of aggravators or mitigators, then it must "identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating." Id.

We review sentencing-process-based challenges for an abuse of discretion. See Mendoza v. State, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (distinguishing between process-based and result-based challenges on appeal), trans. denied. Our Supreme Court has recognized that a trial court can abuse its discretion during the sentencing process by, among other things, "omit[ting] reasons [from the sentencing statement] that are clearly supported by the record and advanced for consideration." Anglemyer, 868 N.E.2d at 491.

Our Supreme Court has held that a defendant who pleads guilty deserves "some" mitigating weight be given to the plea in return. McElroy v. State, 865 N.E.2d 584, 591 (Ind. 2007). But 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. Anglemyer, 875 N.E.2d at 221. The significance of a guilty plea as a mitigating factor varies from case to case. Id.

Dortch proffered his guilty plea as a mitigator and that mitigator is clearly supported by the record. Sent. Tr. p. 31. However, Dortch received a substantial benefit for pleading guilty—the State agreed to dismiss the remaining charges and the allegation that he was a habitual offender. Furthermore, Dortch's decision to plead guilty was largely pragmatic, in light of the multiple witnesses and substantial evidence of his guilt. In sum, Dortch has not demonstrated that his guilty plea was a significant mitigating

circumstance. Thus, we conclude that the trial court did not abuse its discretion by omitting reference to the plea when imposing sentence. Anglemyer, 875 N.E.2d at 221.

II. Length of Sentence

Dortch argues that the trial court erred by imposing an aggregate six-year sentence because his offenses constituted a single episode of criminal conduct. Thus, Dortch contends that that the trial court was not authorized to sentence him to more than four years of imprisonment—the advisory sentence for a felony one class higher than the most serious class of felony for which he was convicted, pursuant to Indiana Code section 35-50-1-2. See Ind. Code § 35-50-2-6 (providing that the advisory sentence for a class C felony is four years imprisonment).

A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits class D felony theft. I.C. § 35-43-4-2. A person who knowingly or intentionally uses a vehicle to attempt to flee from a law enforcement officer after the officer has identified himself and ordered the person to stop commits class D felony attempted resisting law enforcement. I.C. § 35-44-3-3(a)(3).

An "'episode of criminal conduct' means offenses or a connected series of offenses that are closely related in time, place, and circumstance." Ind. Code § 35-50-1-2. Indiana Code section 35-50-1-2 also provides that, except for crimes of violence,[3]

> the total of the consecutive terms of imprisonment to which the defendant is sentenced for felony convictions arising out of an episode of criminal

[3] The State does not allege that either of Dortch's offenses were crimes of violence.

> conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

To determine whether offenses are an episode of criminal conduct, our Supreme Court observed that courts typically analyze 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. Reed v. State, 856 N.E.2d 1189, 1200 (Ind. 2006). However, our Supreme Court cautioned that

> this is a bit of an overstatement. We are of the view that although the ability to recount each charge without referring to the other can provide additional guidance on the question of whether a defendant's conduct constitutes an episode of criminal conduct, it is not a critical ingredient in resolving the question. Rather, the statute speaks in less absolute terms: "a connected series of offenses that are closely connected in time, place, and circumstance."

Id. (quoting I.C. 35-50-1-2).

At the latest,[4] Dortch completed the theft offense when he exited the store. Subsequently, after struggling with the store manager in the parking lot, Dortch entered his vehicle, shifted it into reverse, and backed into Officer Santos's parked police car in an attempt to flee. Dortch's offenses can be recounted without reference to each other and are not closely connected enough in time, place, and circumstance to constitute a single episode of criminal conduct. Thus, the trial court did not err by sentencing him to an aggregate term of six-years imprisonment.

---

[4] The evidence also suggests that Dortch may have completed the theft offense at the time he placed the merchandise under his shirt with the intent to deprive the store of its value or use. See Scruggs v. State, 475 N.E.2d 1194, 1196 (Ind. Ct. App. 1985) (holding that the evidence was sufficient to prove that defendant committed theft although she had not yet exited the store with the merchandise).

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.