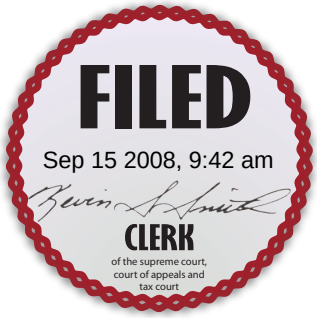

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IN THE
COURT OF APPEALS OF INDIANA

RANDY W. THOMPSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A04-0806-CR-316
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
Cause No. 29D02-0706-FB-71

September 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After Randy W. Thompson pled guilty to residential entry and theft, both Class D felonies, the trial court sentenced him to an aggregate term of three years, ordered this sentence to be served consecutive to Thompson's sentence from a separate cause in another county, and ordered Thompson to pay $8000.00 in restitution. Thompson now appeals his sentence, arguing that: (1) the trial court's imposition of consecutive sentences was not supported by a reasonably detailed sentencing statement; (2) the trial court abused its discretion by failing to identify several mitigators; (3) his sentence is inappropriate; and (4) there was no evidence to support the restitution order. Concluding that the trial court issued a reasonably detailed sentencing statement, the trial court did not abuse its discretion in sentencing Thompson, his sentence is not inappropriate, and the trial court did not abuse its discretion by ordering restitution, we affirm.

Facts and Procedural History[1]

On November 24, 2006, sometime between 10:00 a.m. and 10:45 a.m., Randy Thompson went to the home of Judy and Pat Irgens in Fishers, where he had been doing some work on the Irgenses' home on behalf of his business, R&J Painting & Remodeling. At this time, Thompson was on probation for residential entry and theft convictions out of Tippecanoe County.[2] When Thompson approached the back door of the home, he noticed it was unlocked. Thompson entered the Irgenses' home and stole two credit

[1] The facts surrounding Thompson's crimes are derived from the probable cause affidavit because Thompson did not ask the trial court reporter to transcribe the guilty plea hearing. Thompson does not dispute the facts contained in the probable cause affidavit; indeed, he cites to it in his Statement of Facts.

[2] The residential entry conviction was under cause number 79D05-0403-FD-178 and the theft conviction was under 79D05-0405-FD-249.

cards and some jewelry, including a platinum and diamond wedding ring worth $8000.00. When Judy Irgens returned to her home around 10:45 a.m., she noticed the missing items, contacted the Fishers Police Department, and informed the police that Thompson had recently done some remodeling work at her house, including replacing her back door.

The Fishers Police began an investigation into the burglary and attempted to contact Thompson. On December 7, 2006, the police spoke with Thompson by phone and arranged a meeting in person for later that day; however, Thompson failed to show up at the scheduled meeting. The police went to the address Thompson had given as his home address, but they discovered that he did not live there and may have gone to Lafayette to stay with a relative. The Fishers Police Department later contacted the Lafayette Police Department and learned that the Lafayette Police had active warrants for Thompson and were searching for him.[3]

On April 16, 2007, the Lafayette Police arrested Thompson on the outstanding Tippecanoe County warrants, and during a recorded interview with the Lafayette Police, Thompson admitted to stealing credit cards and jewelry from the Irgenses' home. Thompson indicated that he used the credit cards to purchase a television and that he pawned the jewelry. The Fishers Police Department was able to recover some of the jewelry from the pawn shop, but the $8000.00 wedding ring was not returned.

The State charged Thompson with burglary as a Class B felony and theft, a Class D felony. On February 5, 2008—the day of Thompson's scheduled jury trial—

[3] Thompson had multiple counts of theft pending in Tippecanoe County.

Thompson entered into a plea agreement, wherein he agreed to plead guilty to the Class D felony theft charge and to Class D felony residential entry as a lesser included offense of the Class B felony burglary. As part of the plea agreement, the parties agreed that "the sentences on each count will run concurrently to each other" but that the length of the sentence on each count would be left to the trial court's discretion. Appellant's App. p. 57. The plea agreement also indicated that "[t]here [wa]s no agreement that the sentences will run concurrently to sentences already imposed by other jurisdictions" and that "[a]ll other terms w[ould] be decided by the Court." *Id.*

During the sentencing hearing, evidence was submitted that the platinum and diamond wedding ring was not recovered and that it had an appraised replacement value of $8000.00. Thompson disputed the State's request for restitution, claiming that he did not take the platinum and diamond wedding ring and only took the jewelry recovered from the pawn shop. Thompson also disputed the validity of a couple of the convictions listed in the eight pages of his criminal history contained in the Presentence Investigation Report ("PSI")[4] and argued that, but for his confession to Lafayette Police, this crime

[4] We note that counsel for Thompson included a copy of the PSI on white paper in the Appellant's Appendix. *See* Appellant's App. p. 31-52. We remind counsel that Indiana Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Administrative Rule 9(G)(1)(b)(viii) states that "all pre-sentence reports pursuant to Ind. Code § 35-38-1-13" are "excluded from public access" and "confidential." The inclusion of the PSI printed on white paper in the Appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part: "Every document filed in a case shall separately identify documents that are excluded from public access pursuant to Admin. R. 9(G)(1) as follows: (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked 'Not for Public Access' or 'Confidential.'"

would have remained unsolved. When sentencing Thompson, the trial court addressed Thompson as follows:

> Mr. Thompson, you're a thief. I don't know if I've ever seen a bigger thief. In fact, if I could do to you what they did to the thief on Calvary Hill who was next to Christ, I'd do it. Listening to you talk, I almost think I should be giving you a Kiwanis medal for talking to us and telling the cops what the heck you did. There are so many aggravating circumstances with your criminal record, even if you took a magic marker and blacked out everything else that you-- and you're correct, and they reported that it was correct--, you have more pages as a thief than I've seen in a long, long time.

Tr. p. 25. The trial court sentenced Thompson to three years each for his residential entry and theft convictions and ordered the sentences to be served concurrent to each other but consecutive to the sentences Thompson was serving out of Tippecanoe County, specifically the residential entry and theft sentences from which Thompson was on probation at the time of the crime. *See id.* at 26; Appellant's App. p. 38-39. The trial court also ordered Thompson to pay $8000.00 in restitution to the victims. Thompson now appeals his sentence.

Discussion and Decision

Thompson makes multiple arguments regarding his sentence. Specifically, Thompson argues that: (1) the trial court's imposition of consecutive sentencing was not supported by a reasonably detailed sentencing statement; (2) the trial court abused its discretion in sentencing him when it failed to identify the following as mitigators: (a) his guilty plea and acceptance of responsibility, (b) his remorse, and (c) his diagnosis of bipolar disorder; (3) his sentence is inappropriate; and (4) there was no evidence to support the trial court's award of restitution.

We first address Thompson's argument that the trial court failed to set forth a reasonably detailed explanation for ordering his sentence to be served consecutive to his Tippecanoe County sentences. Indiana trial courts imposing sentences for felony offenses are required to enter sentencing statements. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Such statements "must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." *Id.* Adequate sentencing statements serve the primary purposes of guarding against arbitrary and capricious sentencing and providing an adequate basis for appellate review. *Id.* at 489 (citing *Dumbsky v. State*, 508 N.E.2d 1274, 1278 (Ind. 1987)). They also serve the additional goals of "contribut[ing] significantly to the rationality and consistency of sentences" and "help[ing] both the defendant and the public understand why a particular sentence was imposed." *Id.* (quoting *Abercrombie v. State*, 275 Ind. 407, 417 N.E.2d 316, 319 (1981)).

Here, the trial court imposed an above-advisory sentence of three years on both of Thompson's Class D felony convictions and ordered the sentences to be served concurrent to each other but consecutive to the sentences Thompson was serving out of Tippecanoe County, specifically the residential entry and theft sentences from which Thompson was on probation at the time of the crime. *See* Tr. p. 26; Appellant's App. p. 38-39. Thompson contends that the trial court did not adequately explain its reasons for ordering him to serve his above-advisory sentence consecutive to his Tippecanoe County sentences and asserts that this Court should order his sentence to be served concurrent to his Tippecanoe County sentences. We disagree.

The trial court's reasons for the sentence it imposed are clear from the transcript of the trial court's oral sentencing statement. The trial court explained to Thompson that the sentence it imposed was based upon his extensive criminal history, and Thompson does not challenge the propriety of his criminal history as an aggravating circumstance. Thus, the trial court did not fail to issue a reasonably detailed sentencing statement.

In regard to Thompson's argument that trial court abused its discretion in failing to identify several mitigators, we note that an allegation that the trial court failed to identify or find a mitigating factor 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. "If the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist." *Id.* (quotation omitted).

Turning to Thompson's argument that the trial court abused its discretion by failing to find his guilty plea and acceptance of responsibility to be mitigating, we observe that a guilty plea does not automatically amount to a significant mitigating factor. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). "[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." *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*.

Here, Thompson received a benefit in light of the State's reduction of one of the charges against him from a Class B felony to a Class D felony. In addition, the State agreed that Thompson's sentences for residential entry and theft would be served

concurrently. Furthermore, Thompson did not plead guilty until the day of his jury trial, and the record reveals that the State had audiotapes of Thompson's interview with the Lafayette Police, wherein Thompson admitted to stealing credit cards and jewelry from the Irgenses' home. Thus, the trial court could have reasonably concluded that Thompson's decision to plead guilty was largely a pragmatic one. Accordingly, the trial court did not abuse its discretion by failing to identify Thompson's guilty plea and acceptance of responsibility as a mitigator.

We now turn to Thompson's argument that the trial court should have considered his remorse as a mitigator. At the sentencing hearing, Thompson testified to the following:

> Well, Your Honor, on this Victim Impact Statement there's a lot of things in there that I guess would be in this discovery. It says that I stalked their house to commit this crime . . . They said I took $11,000 worth of jewelry which is incorrect. I mean I -- this right here, according to this discovery, was a non-solvable crime. I admitted to this crime in Lafayette when I got arrested down there. They asked me, you know, if you want to do [a] clean-up statement, absolutely, I wanted to get it over with. Have you done any more crimes anywhere else? I said yes. I was on my way to finish off a job I had a contract for, and I said when I got there the victim wasn't there and I was already drinking that day and on drugs and -- I was clean and sober for about two and a half years, Your Honor, and I had a nice business until my relationship went bad and I started drinking. About two and a half weeks into the drinking I started getting back on drugs. However, I wanted to finish this lady's job. But when I got there, I was already on drugs. She wasn't there. I seen [sic] an opportunity through my drug use that, you know, I could make a fast buck just to get high. And, you know, I didn't go there with the intention of stealing that which is on the evidence tape which was submitted to the state attorney and to my lawyer. I clearly went there, it even states it on the police report I guess. But all the things that she said that I've taken from her house on this Victim Impact Statement, she recants it because in the Motion for Discovery it says that a lot of that stuff was found. But it doesn't say it in this Victim Impact Statement. I mean so if they're going to make the Victim Impact Statement say I did all this, then I think the things that they said I took which they

> recanted in the discovery should be also known to the Court instead of hearing one side of it. I mean I don't want to drag your time out, Your Honor, because I know you've got things to do but.

Tr. p. 10-11. When the trial court asked Thompson if he had "[a]nything else," Thompson responded, "No, Your Honor, other than the fact is I accept the responsibilities for my actions and I'm sorry for what I did." *Id.* at 11.

A trial court's determination of a defendant's remorse is similar to a determination of credibility. *Pickens v. State*, 767 N.E.2d 530, 534-35 (Ind. 2002). Without evidence of some impermissible consideration by the court, we accept its determination of credibility. *Id.* The trial court is in the best position to judge the sincerity of a defendant's remorseful statements. *Stout v. State*, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005), *trans. denied*. Thompson does not allege any impermissible considerations. Thus, the trial court did not abuse its discretion by failing to identify Thompson's alleged remorse as a mitigator.

As for Thompson's diagnosis of bipolar disorder, the Indiana Supreme Court has outlined several considerations that bear on the weight, if any, that should be given to mental illness in sentencing. These factors include: (1) the extent of the defendant's inability to control his behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime. *Weeks v. State*, 697 N.E.2d 28, 31 (Ind. 1998). Where a defendant's mental illness is less severe and the defendant appears to have more control over his thoughts and actions, or where the nexus between a defendant's mental illness and the commission of the crime is less clear, the

trial court may determine on the facts of a particular case that the mental illness warrants relatively little or no weight as a mitigating factor. *Archer v. State*, 689 N.E.2d 678, 685 (Ind. 1997), *reh'g denied*.

During the sentencing hearing, Thompson offered a letter from his psychologist as evidence that he has been diagnosed with bipolar disorder. Thompson, however, made no argument at sentencing—nor any argument on appeal—that he was unable to control his actions or that there was any nexus between his diagnosis of bipolar disorder and the commission of the crimes. Indeed, it appears from the record before us that Thompson's acts of entering the Irgenses' home and taking their property was a means of supporting his drug use. Therefore, the trial court did not abuse its discretion by failing to find Thompson's diagnosis of bipolar disorder as a mitigating factor.

Next, we address Thompson's argument that his sentence is inappropriate. Here, the trial court sentenced Thompson to three years on both of his Class D felony convictions and ordered that these sentences be served concurrently, which was pursuant to the plea agreement, but consecutive to Thompson's convictions out of Tippecanoe County for which he was on probation at the time he committed the current offenses. *See* Tr. p. 26; Appellant's App. p. 38-39.

Although a trial court may have acted within its lawful discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a 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." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The defendant has the burden of persuading us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offense, Thompson, who had been working on the victims' home, entered the home while the victims were gone and took their credit cards and jewelry. The victim, Judy Irgens, submitted an impact statement for the sentencing hearing and indicated that the platinum wedding ring that Thompson took was a family heirloom and had great sentimental value in addition to its monetary value.

As for Thompson's character, the record reveals that Thompson has an extensive criminal history. Forty-year-old Thompson has a host of convictions from three states and dating back more than twenty years to 1986. His convictions include multiple convictions for theft, larceny, possession of marijuana, criminal mischief, and operating while intoxicated, as well as convictions for residential entry, dealing in stolen property, attempted theft, conspiracy to sell cocaine, wanton endangerment, disorderly conduct, and terroristic threatening. Thompson had been placed on probation fourteen times and had violations filed in ten of those cases. At the time of sentencing, Thompson also had active warrants for his arrest on theft charges out of Marion and Tippecanoe Counties. In addition, Thompson was on probation for residential entry and theft convictions out of Tippecanoe County at the time he committed the current residential entry and theft offenses in Hamilton County. Indeed, the trial court was required to order Thompson's sentence in this case to be served consecutive to the crimes for which he was on

probation. *See* Ind. Code § 35-50-1-2(d)(1) ("If, after being arrested for one (1) crime, a person commits another crime . . . before the date the person is discharged from probation . . . the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed."). Thompson has failed to persuade us that his aggregate three-year sentence for two Class D felony convictions is inappropriate.

Finally, we address Thompson's argument that the trial court abused its discretion by ordering Thompson to pay $8000.00 in restitution. "The principal purpose of restitution is to vindicate the rights of society and to impress upon the defendant the magnitude of the loss the crime has caused. Restitution also serves to compensate the offender's victim." *Pearson v. State*, 883 N.E.2d 770, 772 (Ind. 2008) (citation omitted), *reh'g denied*. A restitution order is within the trial court's discretion, and we will only review the order for an abuse of that discretion. *Crawford v. State*, 770 N.E.2d 775, 781 (Ind. 2002). Our restitution statute, Indiana Code § 35-50-5-3(a), provides that a trial court may order a defendant to make restitution to the victim of the crime and that the trial court must base its restitution order for property damages of the victim incurred as a result of the crime upon the actual cost of replacement.

Thompson contends that there was no evidence to support the trial court's order requiring him to pay $8000.00 in restitution. However, evidence was submitted that the platinum and diamond wedding ring stolen from the victim's home was not recovered and that it had a replacement value of $8000.00. Accordingly, the trial court did not abuse its discretion in ordering $8000.00 in restitution.

Affirmed.

KIRSCH, J., and CRONE, J., concur.