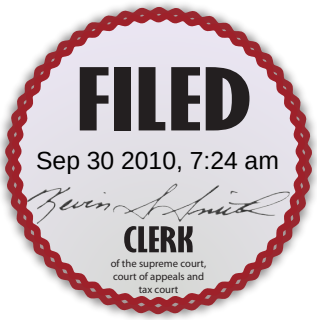

ATTORNEY FOR APPELLANT:

JOHN A. KESLER II
Terre Haute, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

BRIAN REITZ
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

JENNIFER BEALMEAR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 84A01-1003-CR-101
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause No. 84D03-0710-FC-3229

September 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Jennifer Bealmear appeals her four-year sentence with two years served in the Department of Correction and two years suspended to probation for Class C felony battery by means of a deadly weapon. Concluding that the trial court did not abuse its discretion in not identifying Bealmear's guilty plea as a mitigator and that Bealmear's sentence is not inappropriate, we affirm.

Facts and Procedural History[1]

On September 9, 2007, Bealmear was at the Fontanet Inn in Vigo County, Indiana. Cara Ramey, who lived in Indianapolis, also happened to be there attending a bachelorette party for one of her high school friends. Ramey did not know Bealmear. At some point, Bealmear, unprovoked, attacked Ramey with a beer glass. The glass shattered in Ramey's face, causing five lacerations. Thereafter, Bealmear continued to hit Ramey in the face and pull out her hair. Ramey went to the hospital and received eighteen stitches and Dermabond for her lacerations.

The State charged Bealmear with Class C felony battery by means of a deadly weapon. Ind. Code § 35-42-2-1(a)(3). The State and Bealmear entered into a plea agreement by which Bealmear pled guilty as charged with the parties to "argue sentencing to the Court." Appellant's App. p. 19. The trial court accepted the plea agreement and proceeded to sentencing. It was agreed that two years of Bealmear's sentence was nonsuspendible pursuant to Indiana Code section 35-50-2-2. Ramey testified about her injuries, visible scars, and the impact this attack has had on her daily

[1] Because the factual basis for Bealmear's guilty plea contains very few facts, *see* Tr. p. 10-11, both Bealmear and the State, as do we, rely on facts from the sentencing portion of the hearing.

life. Bealmear, who was unemployed at the time of sentencing, testified that she has three children—ages ten, eight, and three—and therefore would like to serve the nonsuspendible portion of her sentence on home detention, for which she qualified. Bealmear said that she was drinking "a lot" on the night of the incident, but she does not "drink at all" anymore. Tr. p. 41. When asked if she had anything to say to Ramey, Bealmear said, "It was an accident that she got hit in the face with the glass." *Id.*

In pronouncing Bealmear's sentence, the trial court noted that although Ramey's injuries may not have been life threatening, they were nonetheless "life altering." *Id.* at 49. The court was also taken aback by Bealmear's statement that it was an accident. The trial court said, "Well, it's clear it's not an accident. It's, it is absolutely clear. . . . [Y]ou can minimize it all you want, but one thing it wasn't, is an accident." *Id.* at 51-52. The trial court also noted that two months after this incident, Bealmear was involved in yet another bar fight for which she was charged. The court identified the following aggravators: (1) the harm, injury, loss, and damage was significant and greater than the elements necessary to prove the commission of the offense and (2) although Bealmear does not have any prior violent offenses, she has a lengthy criminal history including crimes of dishonesty and driving offenses. The court identified the following mitigators: (1) the crime is the result of circumstances unlikely to recur in light of Bealmear having altered her lifestyle and (2) imprisonment will result in undue hardship to her dependents. The court concluded that the aggravators outweighed the mitigators and sentenced Bealmear to the advisory term of four years, with two years served in the DOC and two years suspended to probation. The court ordered Bealmear to receive alcohol and drug

counseling while in the DOC and said that upon successful completion of the program, it would consider sentence modification. *See id.* at 52-53. Bealmear now appeals her sentence.

Discussion and Decision

Bealmear makes two arguments on appeal. First, she contends that the trial court abused its discretion in not identifying her guilty plea as a mitigator. Second, she contends that her sentence is inappropriate.

I. Abuse of Discretion

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). An abuse of discretion 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. *Id.* 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).

Bealmear contends that the trial court abused its discretion in not identifying her guilty plea as a significant mitigating circumstance. A defendant who pleads guilty generally deserves "some" mitigating weight to be afforded to the plea. *Anglemyer*, 875 N.E.2d at 220 (citing *McElroy v. State*, 865 N.E.2d 584, 591 (Ind. 2007)). However, our

Supreme Court has recognized that a trial court does not necessarily abuse its discretion by failing to recognize a defendant's guilty plea as a significant mitigating circumstance. *Id.* at 221. Instead, a trial court is only required to identify mitigating circumstances that are both significant and supported by the record, and "a guilty plea may not be significantly mitigating when it does not demonstrate the defendant's acceptance of responsibility . . . ." *Id.*

Here, Bealmear testified at the sentencing hearing as follows:

> Well, what I was gonna say is that like, the acting out part or whatever, you know, I guess we was in a bar and everybody had consumed a lot of alcohol, so – and I don't necessarily – I'm not in the Fontanet Tavern all the time myself, so, you know, and, I'd like to say that, you know, yes I'm sorry for anything I did to her, you know, her face or whatever, because you know, I realize, I have girls too. I realize that, you know, that can happen. *It was an accident that she got hit in the face with the glass.*

Tr. p. 41 (emphasis added). Given this testimony, which places blame on alcohol and calls the brutal attack an "accident," Bealmear's guilty plea appears to be more likely the result of pragmatism than acceptance of responsibility. Bealmear has not demonstrated that her guilty plea was a significant mitigating circumstance. The trial court did not abuse its discretion.

II. Inappropriate Sentence

Bealmear contends that her four-year sentence with two years served in the DOC and two years suspended to probation is inappropriate because the non-suspended portion of her sentence should be served on home detention so she "c[an] . . . obtain[] employment and continue[] to raise and support her children." Appellant's Br. p. 12.

"Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution 'authorize[] independent appellate review and revision of a sentence imposed by the trial court.'" *Anglemyer*, 868 N.E.2d at 491 (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)). Our appellate authority is implemented through Indiana Appellate Rule 7(B), which allows us to "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." When considering the appropriateness of a defendant's sentence, appellate courts may take into account the suspended portion of the sentence. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

A person who commits a Class C felony shall be imprisoned for a fixed term of between two and eight years, with the advisory term being four years. Ind. Code § 35-50-2-6(a). Here, the trial court sentenced Bealmear to the advisory term of four years, with two years to be served in the DOC and two years suspended to probation.

Bealmear writes on appeal that she "is happy to have received the minimum executed sentence, that being two years, however, the Court erred by not allowing that 2 years to be served in an alternative sentencing program such as in-home detention . . . ." Appellant's Br. p. 12. The location where a sentence is to be served is an appropriate focus for application of our review and revise authority. *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). It will be quite difficult for a defendant to prevail on a claim that the placement of her sentence is inappropriate. *Id.* This is because the question

under Appellate Rule 7(B) is not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate. *Id.* at 268. A defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate. *Id.* As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities. *Id.* For example, a court is aware of the availability, costs, and entrance requirements of community corrections placements in a specific locale. *Id.*

Here, the nature of the offense is deplorable. Bealmear, without provocation, attacked Ramey, whom she did not know, with a beer glass, shattering the glass in Ramey's face and causing five lacerations which required stitches. These lacerations are now permanent scars. Bealmear then continued the attack on Ramey by striking her in the head and pulling out her hair. Bealmear called the attack an "accident" at the sentencing hearing and now downplays the attack on appeal by stating that "it is not like [she] used a club or a knife or a gun." Appellant's Br. p. 6.

Bealmear's character does not fare any better. She has a substantial criminal history, including Class C misdemeanor operating never having received a license, four unrelated counts of Class A misdemeanor criminal conversion, Class A misdemeanor theft, Class C misdemeanor leaving the scene of an accident, and Class A misdemeanor driving while suspended. And a couple of months after this incident, Bealmear was charged with Class B misdemeanor battery for yet another bar fight. Although Bealmear asserted that she had not consumed any alcohol in one year and we commend her, this effort does not render her placement inappropriate. In fact, the trial court gave Bealmear

an opportunity for a sentence modification upon successful completion of an alcohol program in the DOC. As for Bealmear's children, Bealmear, who was unemployed at the time of sentencing, testified that if she went to prison, her sister and mom would take care of her children. Tr. p. 43. Finally, we point out that Bealmear has received suspended sentences and probation for all of her prior convictions. This leniency has had no effect on Bealmear, and as a result the severity of her crimes has only escalated. Bealmear has not persuaded us that the location where the executed portion of her sentence is to be served is inappropriate.

Affirmed.

MAY, J., and ROBB, J., concur.