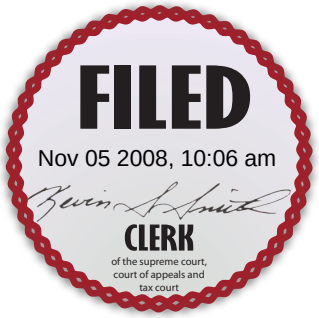

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IN THE
COURT OF APPEALS OF INDIANA

MAURICE A. STANTZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0804-CR-172
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
FELONY DIVISION
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0712-FC-320

November 5, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Maurice A. Stantz (Stantz), appeals his sentence for one Count of corrupt business influence, a Class C felony, Ind. Code § 35-45-6-2, and five Counts of theft, as a Class D felony, I.C. § 35-43-4-2.[1]

We affirm.

ISSUES

Stantz presents two issues for our review, which we restate as:

(1) Whether the trial court abused its discretion when sentencing him; and

(2) Whether his sentence is inappropriate when the nature of his offense and his character are considered.

FACTS AND PROCEDURAL HISTORY

On December 26, 2007, the State filed an Information charging Stantz with one Count of corrupt business influence, a Class C felony, and five Counts of theft, as Class D felony for his involvement in an operation which stole valuable metal from five to six hundred air conditioning units. On March 7, 2008, Stantz pled guilty to all charges. On March 28, 2008, a sentencing hearing was held. At the sentencing hearing, Stantz informed the trial court that he had been abused by his mother as a child and never knew his biological father. He also explained that, at the time of his crimes, he did not have money for food or utility bills, and was taking care of a sick friend. His friend testified that Stantz had taken care of him over

[1] The trial court held a joint sentencing hearing for Lower Court Cause Nos. 02D04-0712-FC-320 and 02D04-0802-FC-35. We address Stantz's appeal of Lower Court Cause No. 02D04-0802-FC-35 *Stantz v. State*, Case

the previous five years and is a good man. After introducing this evidence, Stantz presented argument that he was manipulated by a man named Zumwalt, who was his codefendant in another action that was pending against him.

The trial court found that Stantz's criminal history, which consisted of four prior misdemeanor convictions, three prior felony convictions, and then-pending charges in Steuben and Adams Counties, was an aggravating factor, and found Stantz's plea of guilty and his acceptance of responsibility were mitigating factors. But, the trial court refused to give Stantz's financial hardship any mitigating weight, because "[e]verybody's on a tight budget . . . but people don't go out and steal five hundred air conditioner condensers to pay their bills." (Transcript p. 12). The trial court sentenced Stantz to four years on Count I, corrupt business influence, and two years each on Counts II through VI, with all the terms to be served concurrently in the Department of Correction.

Stantz now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

Our supreme court clarified a defendant's right to appellate review of a trial court's sentencing decision by stating, "[s]o long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *aff'd on reh'g*, 875 N.E.2d 218. An abuse of discretion occurs if we find the trial court's decision is clearly against the logic and effect of the facts and circumstances before

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No. 02A03-0804-CR-215, Slip Op. (November 5, 2008), address Stantz's appeal from Lower Court Cause

the court. *Payne v. State*, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006). The trial court no longer has any obligation to weigh aggravating and mitigating factors, and therefore cannot be said to have abused its discretion in failing to properly weigh those factors. I.C. § 35-38-1-7.1(d); *see also Anglemyer*, 868 N.E.2d at 491.

Additionally, we have the authority to review the appropriateness of a sentence authorized by statute through Appellate Rule 7(B). That rule permits us to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Anglemyer*, 868 N.E.2d at 491.

II. *Abuse of Discretion*

Stantz argues that the trial court abused its discretion when it sentenced him. Specifically, Stantz argues that the trial court overlooked certain mitigating factors which are clearly supported by the record, those being: (1) that "he was severely physically abused by his mother [while] growing up"; (2) that he "never [knew] his biological father"; (3) that he had been "caring for himself since the age of fifteen"; (4) that he "committed these offenses in order to purchase food, medicine, and provide shelter for his friend"; (5) that he "had not been convicted of any prior thefts"; and (6) that Zumwalt "took advantage" of him because of his financial desperation. (Appellant's Br. p. 11).

One way in which a trial court may abuse its sentencing discretion is by omitting reasons that are clearly supported by the record and advanced for consideration. *Anglemyer*,

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No. 02D04-0712-FC-320 in this decision. Stantz makes identical arguments in each appeal.

868 N.E.2d at 490-491. Because the trial court made findings of mitigating circumstances when sentencing Stantz, "the trial court was required to identify all significant mitigating circumstances." *Id*. at 492-93. 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. *Id*. (citing *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1998)). However, "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." *Anglemyer*, 868 N.E.2d at 493 (quoting *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993)).

Stantz's counsel presented the following argument to the trial court at the sentencing hearing:

> Your Honor, to follow up. Upon several conversations with Mr. Stantz I've gotten to know him a little bit better. Mr. Stantz has been out on his own, fending for himself since the age of fifteen years old. He profited approximately seven hundred dollars from all these thefts and with that money he paid the utilities. He bought David medicine that David needed to survive and groceries. He was in a very vulnerable financial position and [] Zumwalt knew that when [] Zumwalt came to [] Stantz with the idea of committing these thefts of these air conditioning units. Your Honor, he has accepted responsibility. He is fifty years old. Not in the greatest of health. And he didn't do this to make a profit or become rich in any sense, he did this simply to survive and do what he had to do to keep a roof over his head and food in his stomach.
>
> * * * *
>
> He has been provided this morning with the entire restitution amount which I don't believe is accurately reflected in the PSI . . . . The entire restitution amount from what [the State] has handed me is $262,898.95.

(Tr. pp. 6-8).

A. *Stantz's Claims of a Difficult Childhood*

We note that although Stantz now argues that the trial court abused its discretion by not finding the facts that Stantz was abused while growing up and never knew his biological father were mitigating factors, his counsel did not present argument that these facts should be found to be mitigating factors to the trial court. His counsel's failure to do so detracts from the significance these potentially mitigating factors are to be given. *See Creekmore v. State*, 853 N.E.2d 523, 530 (Ind. Ct. App. 2006) ("[I]f the defendant fails to advance a mitigating circumstance at sentencing, this court will presume that the factor is not significant, and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal."). Further, the Pre-Sentence Investigation Report (PSI) stated:

> The defendant reported he was the middle child of six (6) siblings. He stated he was raised by his mother and father and had a normal childhood. He informed he has a good relationship with his family and denied suffering any form of abuse.

(Appellant's App. p. 68). Stantz's self-serving statements at the sentencing hearing were the only evidence of his childhood abuse or lack of relationship with his father, and in light of the PSI, those statements would not be clear evidence from which the trial court would be required to find those facts. Further, the trial court was presented with no evidence that Stantz was forced to leave home and take care of himself at the age of fifteen. His counsel made this statement, but the unsworn statements of counsel are not evidence from which the trial court could make a finding of this fact. *See Kronmiller v. Wangberg*, 665 N.E.2d 624, 627 (Ind. Ct. App. 1996), *trans. denied*. Moreover, "evidence of a difficult childhood warrants little, if any, mitigating weight." *Coleman v. State*, 741 N.E.2d 697, 700 (Ind.

2000), *reh'g denied*. For all of these reasons, we conclude that the trial court did not abuse its discretion when it did not find Stantz's difficult childhood was a mitigating factor.

B. *Stantz's Claim That He Stole to Pay Necessary Expenses*

The trial court addressed Stantz's claim that he stole to pay for food, utility bills, and medicine for his friend by stating: "You say you did these not to become rich but to pay bills. Everybody's on a tight budget Mr. Stantz but people don't go out and steal five hundred air conditioner condensers to pay their bills . . . that's why there are programs." (Tr. p. 12). Thus, the trial court did not overlook Stantz's claim of necessity despite clear support in the record as Stantz contends, but rather rejected Stantz's claim that the fact should be given mitigating weight. "A sentencing court need not agree with the defendant's assessment as to the weight or value to be given to proffered mitigating facts." *Creekmore*, 853 N.E.2d at 530. Therefore, the trial court's rejection of Stantz's financial hardship is a decision which lies well within the broad discretion of the trial court when sentencing an offender.

C. *Lack of Prior Conviction for Theft*

Stantz did not argue to the trial court that the fact that he had not been previously convicted for theft was a mitigating factor. Since this fact was not advanced for the consideration of the trial court, the trial court could not have abused its discretion by failing to find it as a mitigating factor. *See Anglemyer*, 868 N.E.2d at 490-91.

D. *Stantz's Claim That Zumwalt Took Advantage of Him*

Stantz's attorney stated to the trial court that Zumwalt knew that Stantz "was in a very vulnerable financial position" and enticed Stantz into stealing the air conditioning compressors. However, there was no evidence supporting such a claim on the record, and, therefore, the trial court did not abuse its discretion by not finding Zumwalt took advantage of Stantz.

In summary, many of Stantz's arguments that the trial court abused its discretion fail because his contentions are not supported by evidence on the record or argument by counsel to the trial court. We note that during the sentencing hearing, Stantz's trial counsel did not examine Stantz with directed questions. Further, Stantz's trial counsel's argument was more of an unorganized statement, which can loosely be interpreted as a request for the trial court to find mitigating factors, but never actually stated that specific request. With a more formal and organized approach, Stantz would likely have done a better job of advancing these facts to the trial court for its consideration, and we would have considered the merits of more of his contentions.

III. *Appropriateness of Stantz's Sentence*

Stantz argues that his sentence is in inappropriate when the nature of his offenses and his character are considered. We note that the trial court sentenced Stantz to four years—the advisory term—on Count I, corrupt business influence, as a Class C felony, and two years each on the five Counts of theft, as a Class D felony, each being one-half year longer than the advisory term for those thefts. *See* I.C. §§35-50-2-6 and 7.

As for the nature of Stantz's crimes, his crimes resulted in an aggregate loss to the victims and their insurance companies of over $260,000, but resulted in a gain for himself of only hundreds of dollars. Stantz is correct when he states that his crimes "did not cause or threaten serious harm to any persons," but is incorrect when he states that he did not cause serious harm to property. (Appellant's Br. p. 15). Many of the victims of Stantz's crimes made claims on their insurance policies, and considering the extent of the harm caused by Stantz, the impact of his crimes will likely be felt beyond the individual victims of his crimes in the form of higher insurance premiums or restricted insurance policies in the future. Stantz notes that he was ordered to pay restitution, but Stantz has repeatedly contended that he committed his crimes because he has no money, which causes us to doubt that he will ever be able to pay this large amount of restitution.

Considering Stantz's character, we acknowledge that his caring for his sick friend is commendable. However, this is an act that many law-abiding citizens facing financial difficulties perform on a daily basis. Further, Stantz has previously been convicted of four misdemeanors and three felonies, and on the same day of his guilty plea in this matter, Stantz also pled guilty to insurance fraud, a Class C felony, I.C. § 35-43-5-4.5, and at the time of the PSI, Stantz had charges pending against him in Steuben and Adams Counties, Indiana. Altogether, we are not convinced that Stantz's sentence is inappropriate when the nature of his offense and character are considered.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion when sentencing Stantz and that Stantz's sentence is not inappropriate when the nature of his offenses and character are considered.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.