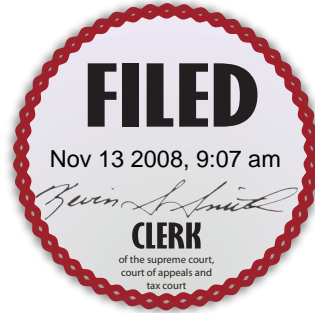


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

WARREN IVY,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 45A03-0804-CR-147

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0708-FB-59

November 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Warren Ivy appeals his sentence following his conviction for Dealing in Cocaine, as a Class B felony. Ivy presents a single issue for our review, namely, whether the trial court abused its discretion when it sentenced him.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 5, 2007, Ivy pleaded guilty to dealing in cocaine, as a Class B felony. In exchange for Ivy's plea, the State dismissed three other felony charges. At sentencing, the trial court identified two mitigators and three aggravators and sentenced Ivy to thirteen years executed. This appeal ensued.

DISCUSSION AND DECISION

Ivy contends that the trial court abused its discretion in sentencing him. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds 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. (quotation omitted).

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say

with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.

Id. at 490-91.

Here, the trial court identified two mitigators, namely, Ivy's apparent remorse and guilty plea. And the trial court identified three aggravators, namely, Ivy's criminal history, that three of his prior felony convictions are drug-related, and that he has violated conditions of parole or probation. Ivy does not challenge the validity of those mitigators or aggravators on appeal. Rather, he contends that the trial court should have imposed a lesser sentence because: (1) his most recent criminal conviction prior to this offense was in 2005; and (2) the State recommended a twelve-year sentence. In essence, Ivy maintains that the trial court should have given his criminal history less aggravating weight. But the weight a trial court assigns to mitigating or aggravating factors is not subject to review for an abuse of discretion. See id. at 491. And the trial court is not bound by a prosecutor's recommendation at sentencing, unless that recommendation is a term of an accepted plea agreement. Here, Ivy entered an open plea, and his plea agreement left sentencing to the trial court's discretion.

Ivy's criminal history consists of five felonies and five misdemeanors dating to 1993. Ivy has previously violated the terms of his probation and parole. The trial court did not abuse its discretion when it sentenced Ivy to thirteen years for this B felony conviction.

Affirmed.

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