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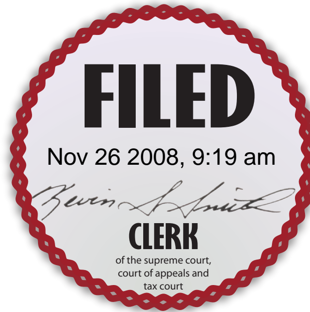

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IN THE
COURT OF APPEALS OF INDIANA

TYRONE MATHIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-0804-CR-256
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
Cause No. 45G02-0710-FC-135

November 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Tyrone Mathis argues that the trial court abused its discretion in sentencing him for Burglary, as a Class C felony.[1] We affirm.

Facts and Procedural History

Mathis entered Universal Recycling by prying and cutting open "two large aluminum overhead doors." Appendix at 20. He took property without the owner's consent.

Mathis was charged with Burglary, as a Class C felony, and pled guilty as charged, pursuant to a plea agreement. It provided for a maximum sentence of six years; the State agreed not to file a Habitual Offender enhancement. The trial court found one aggravating circumstance, an extensive criminal history, and one mitigating circumstance, Mathis' pleading guilty. The trial court sentenced Mathis to a six-year term of imprisonment, to be fully executed.

Mathis now appeals.

Discussion and Decision

On appeal, Mathis argues that the trial court abused its discretion in sentencing him by: (1) failing "to recite" the criminal history contained in the pre-sentence investigation report; and (2) overlooking his plea as a mitigating circumstance. Appellant's Brief at 4.

The minimum and maximum sentences for a Class C felony are respectively two and eight years. Ind. Code § 35-50-2-6.

A court may impose any sentence that is:

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[1] Ind. Code § 35-43-2-1.

> (2) authorized by statute; and
>
> (3) permissible under the Constitution of the State of Indiana;
>
> regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

Ind. Code § 35-38-1-7.1(d) (emphasis added).

"So 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), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007). When imposing sentence for a felony, the trial court must enter "a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence." Id. at 491.

First, Mathis argues that the sentencing statement was not reasonably detailed. During the sentencing hearing, the trial court stated,

> Now, with respect to the criminal history, it's certainly difficult to take issue with the State's position here. Mr. Mathis' criminal history is horrendous, six felony convictions, four misdemeanor convictions. His criminal history dates back to the early 80's.

Transcript at 22. In finding the criminal history as an aggravating circumstance, the trial court wrote in its order, "[t]he defendant has a history of criminal convictions and juvenile adjudications." App. at 21. The trial court's sentencing statement was reasonably detailed.

Second, regarding the guilty plea, Mathis attempts to characterize a statement made by the trial court during the hearing and a statement made in its written order as inconsistent. "The obvious explanation, especially in light of the comments made by the trial court during sentencing about leniency, is that the trial court simply overlooked [Mathis' pleading guilty]

when deciding Mathis' sentence." Appellant's Br. at 6. The record suggests otherwise. During the hearing, the trial court stated,

> [T]his court always looks for some basis for leniency after it reviews the aggravating circumstances of a case. I can't find any, frankly. There's just nothing <u>in your background</u> that would give the court any legal basis to grant any leniency here.

Tr. at 23-24 (emphasis added). This statement does not suggest that the trial court overlooked the plea as a mitigating circumstance. To the contrary, the fact of the plea agreement was ubiquitous in the brief sentencing hearing. It is clear that the trial court was well aware of the guilty plea. Furthermore, the statement in the hearing spoke only to Mathis' background and did not purport to address the patently obvious plea agreement. The written order, dated the same day as the hearing and received by the clerk the next day, explicitly included Mathis' guilty plea as a mitigating circumstance.

Finally, to the degree that Mathis' argument amounts to criticism of how the trial court weighed the aggravating and mitigating circumstances, such a claim is unavailing. A trial court's sentencing order may no longer be challenged as reflecting an improper weighing of sentencing factors. <u>Anglemyer</u>, 868 N.E.2d at 491.

The trial court did not abuse its discretion in sentencing Mathis.

Affirmed.

RILEY, J., and BRADFORD, J., concur.