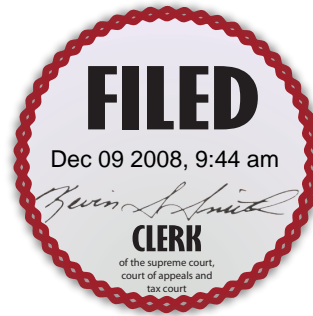


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

BRANDON RAMON WILLIAMS,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 73A04-0804-CR-227

APPEAL FROM THE SHELBY SUPERIOR COURT NO. 1
The Honorable Jack A. Tandy, Judge
Cause No. 73D01-0705-FA-1

December 9, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Brandon Ramon Williams (Williams), appeals his sentence following a guilty plea to criminal deviate conduct, a Class B felony, Ind. Code § 35-42-4-2.

We affirm.

ISSUES

Williams raises one issue on appeal, which we restate as the following two issues:

- (1) Whether the trial court abused its discretion in finding aggravators and mitigators;
- and
- (2) Whether his sentence is appropriate in light of his character and the nature of his offense.

FACTS AND PROCEDURAL HISTORY

On May 22, 2007, Williams and his wife, J.W., were having marital problems. That morning, at approximately 7:00 a.m., before the couple's two older daughters left for school, Williams confronted J.W. and alleged that she was involved with a new boyfriend. The confrontation became violent when Williams grabbed J.W. by the throat, choked her, and forcibly tied her to the bed. Williams told the two older girls that he "was just tickling" J.W. and, with much prompting from Williams, the girls left for school. (Transcript p. 27). After tying J.W. to the bed, he held a knife to her throat to prevent her from screaming and repeatedly choked her to the point J.W. thought she was going to die. Williams forcibly had vaginal and anal sex with J.W. Still armed with the knife, Williams forced J.W. to perform oral sex on him. Williams confined his wife until 3:00 p.m., releasing her shortly before the

older girls returned from school. However, during J.W.'s entire confinement, the couple's youngest daughter, who was five years old, was in the house.

On May 23, 2007, the State filed an Information charging Williams with Count I, rape, a Class A felony, I.C. § 35-42-4-1; Count II, criminal deviate conduct, a Class A felony, I.C. § 35-42-4-2; Count III, criminal confinement, a Class B felony, I.C. § 35-42-3-3; Count IV, battery, a Class C felony, I.C. § 35-42-2-1; and Count V, domestic battery, a Class D felony, I.C. § 35-42-2-1.3. On January 11, 2008, Williams entered into a plea agreement with the State in which he agreed to plead guilty to criminal deviate conduct as a Class B felony, with sentencing to be left to the discretion of the trial court. In exchange, the State dismissed the remaining Counts. On February 29, 2008, during a sentencing hearing, the trial court sentenced Williams to eighteen years of incarceration. As the basis for its sentence, the trial court noted four aggravating factors: 1) Williams' criminal history, 2) Williams committed the crime when his daughter was in the home, 3) the harm from the acts exceeded that which was necessary to prove commission of the offense, and 4) Williams requires correctional or rehabilitative treatment best provided in a penal facility. The trial court found Williams' mental health issues to be the sole mitigating factor.

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

DISCUSSION AND DECISION

I. Standard of Review

Williams contends that the trial court abused its discretion by sentencing him to an executed sentence of eighteen years. Because Williams committed his offense after April 25,

2005, we review Williams' sentence under the advisory sentencing scheme. Under this scheme, a person who commits a Class B felony shall be imprisoned for a fixed term of between six and twenty years, with the advisory sentence being ten years. I.C. § 35-50-2-5.

As long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) , *aff'd on reh'g* 875 N.E.2d 218. 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 trial court may abuse its discretion is by failing to enter a sentencing statement at all. Another example includes entering a sentencing statement that explains reasons for imposing a sentence, including aggravating and mitigating factors, which are not supported by the record. *Id.* at 490-91.

Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion by failing to properly weigh such factors. *Id.* at 491. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id.*

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id.* Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence

is inappropriate in light of the nature of the offense and the character of the offender. *Id.* It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id.*

II. *Aggravators and Mitigators*

Here, Williams first argues that the trial court abused its discretion in finding that he had a criminal history and that the harm caused to J.W. and her daughters was significant and greater than the elements necessary to prove the commission of the offense because both aggravators are not supported by the record. We disagree. The record reflects that Williams' criminal history consists of a misdemeanor domestic violence conviction against J.W. in 1999, a misdemeanor criminal trespass conviction in 2001, another misdemeanor domestic battery conviction against J.W. in 2003 and a misdemeanor operating a motor vehicle while intoxicated conviction in 2003. While admittedly Williams' criminal history is limited to misdemeanor offenses, this does not prevent the trial court from considering it as an aggravating factor. *See, e.g., Pagan v. State*, 809 N.E.2d 915, 928 (Ind. Ct. App. 2004), *trans. denied* (a single juvenile adjudication and single adult conviction warranted some aggravation). Furthermore, we find that the harm caused to J.W. and her daughters is sufficiently supported by the record to be considered as an aggravator. During the sentencing hearing, J.W. testified to her and her daughters' life after the assault, indicating that they are still terrified and suffer from nightmares. Additionally, insofar as Williams is disputing the

relative weight attributed by the trial court to these aggravators, we note that this argument is no longer available for our review. *See Anglemeyer*, 868 N.E.2d at 491.

Next, Williams asserts that the trial court failed to consider his plea agreement as a mitigating factor. However, a guilty plea does not automatically amount to a significant mitigating factor. For example, 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, under the terms of the plea agreement, the State dismissed one Class A felony, a Class C felony, a Class D felony, and reduced a Class A felony to the Class B felony to which Williams admitted guilt. In light of this already substantial benefit to Williams, the trial court did not abuse its discretion in failing to find Williams' guilty plea to be a mitigating factor.

III. *Appropriateness of the Sentence*

In addition, we find that Williams' sentence is appropriate in light of his character and nature of the crime. With respect to the nature of the crime, we note that Williams imprisoned J.W. for six hours in their home. He tied her up to the bed, held a knife to her throat, threatened to kill her and repeatedly choked her to the point where she thought she would die. Williams raped J.W. vaginally and anally and forced her to perform oral sex on him. All the while, their five-year old daughter was in the residence. Turning to Williams' character, we observe that Williams has a history of domestic abuse against J.W. While

Williams' actions are not new, they are noticeably increasing in violence. In light of these circumstances, we conclude that Williams' sentence was appropriate.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly sentenced Williams.

Affirmed.

BAILEY, J., and MAY, J., concur.