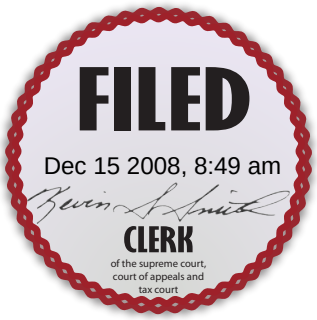

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IN THE
COURT OF APPEALS OF INDIANA

VANCE JONES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0803-CR-273
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0706-FB-94061

December 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Vance Jones appeals the sentence he received following his conviction of Criminal Recklessness,[1] a class C felony, which was entered upon his plea of guilty. We address the following issues:

1. Did the trial court err in weighing the aggravating and mitigating circumstances?

2. Was the sentence inappropriate in light of Jones's character and the nature of his offense?

We affirm.

This conviction stems from an April 10, 2007 incident that started as a confrontation between Jones and his girlfriend, who was at the time a passenger in a car being driven by Kimberly Williams. Kimberly Williams ultimately became involved in the confrontation. Jones admitted the following facts at the guilty plea hearing:

> [Jones] did by means of a deadly weapon, that is: a car door, recklessly, knowingly or intentionally inflict serious bodily injury, that is: severe vascular damage and or intentionally inflict serious bodily injury, that is: severe vascular damage and/or a fracture to the leg requiring multiple surgeries for vascular bypass, a graft or repair and/or placement of a rod in the leg of another person and that is Kimberly Williams, by slamming a car door on the leg of Kimberly Williams.

As a result of this incident and other acts allegedly committed by Jones, Jones was charged with aggravated battery as a class B felony and theft as a class D felony. The State and Jones entered into a plea agreement whereby Jones agreed to plead guilty to a reduced charge of criminal recklessness as a class C felony, and the State would dismiss the theft charge. The parties agreed that sentencing would be left to the trial court's discretion. The

[1] Ind. Code Ann. § 35-42-2-2 (West, PREMISE through 2008 2nd Regular Sess.).

trial court accepted the agreement and entered judgment accordingly. Following a hearing, the court imposed a six-year sentence. Jones appeals the sentence.

1.

Jones presents only one argument on appeal, and it is an issue we cannot address; we infer a second argument, however, which we can address. The only argument presented on appeal is framed thus: "The trial court improperly weighed the aggravating and mitigating circumstances. The mitigating factors should outweigh the aggravating factors in the present case." *Appellant's Brief* at 5. In *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218, our Supreme Court determined that a claim of improper weighing of aggravating and mitigating factors is no longer available on appeal. The Court explained:

> Because the trial court no longer has any obligation to "weigh" aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to "properly weigh" such factors. *See, e.g., Jackson v. State*, 728 N.E.2d 147, 155 (Ind. 2000) (finding that the Court could not determine from the sentencing statement whether the trial court "properly weighed" the aggravating and mitigating factors).

Id., 868 N.E.2d at 491. Thus, this claim is no longer viable as an abuse of the trial court's discretion.

2.

We presume that, although couched in terms of weighing the aggravating and mitigating circumstances, the gravamen of Jones's argument on appeal concerns the appropriateness of the sentence. We will exercise our discretion to address that issue, although it is not formally presented.

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. The defendant bears the burden of persuading this court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

We begin by examining Jones's character. When pronouncing sentence, the trial court identified two mitigating circumstances – Jones's diminished mental capacity and the fact that he pleaded guilty. The two aggravating circumstances identified by the court included Jones's criminal history and the fact that he has previously been on probation at least four times, and was revoked each time. With respect to the guilty plea, it is well established that a defendant who pleads guilty deserves to have some mitigating weight extended to the guilty plea in return. *See Cotto v. State*, 829 N.E.2d 520 (Ind. 2005). It has been frequently observed, however, that "a plea is not necessarily a significant mitigating factor." *Cotto v. State*, 829 N.E.2d at 525; *see also Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("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"), *trans. denied*. Jones clearly received substantial benefits in return for his guilty plea. The State agreed to dismiss one charge and

to reduce the other. Under these circumstances, although it constituted a mitigating circumstance, as found by the trial court, Jones's guilty plea was not entitled to great weight. The same can be said of Jones's diminished mental capacity. Clearly, he functions at a high enough level to have appreciated the wrongfulness and implications of his conduct.

Jones's criminal history encompasses multiple offenses,[2] dating from 1982 to 2004. Included are a conviction for burglary, two convictions for theft, at least one conviction for criminal trespass, and multiple other misdemeanor offenses. Clearly, he has difficulty conforming his conduct to the laws of society. Moreover, on four previous occasions the trial court has extended grace and permitted Jones to serve at least a portion of his sentence on probation. Jones has responded each time by violating the conditions of his probation. This does not speak highly of his character. As to the nature of his offense, Jones was the provocateur in a confrontation with his girlfriend and his anger soon spilled over onto a bystander, resulting in serious injury to that person.

Reflecting on the above, we conclude Jones has failed to establish that the sentence imposed for the criminal recklessness conviction is inappropriate in light of the nature of the offense and Jones's character.

Judgment affirmed.

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[2] Typically, we learn detailed information about a defendant's criminal history from the presentence investigation report (PSI) submitted with the appellate materials. In Jones's case, the index to the *Appellant's Appendix* indicates that his PSI may be found in an "enclosed envelope". *Appellant's Appendix* at third unnumbered page. Indeed, that is where it normally may be found. In this case, however, we found no such envelope. A phone call to this court's Administrator's Office reveals that according to the records of the Clerk of the Courts, the PSI was not submitted with this appeal. To put it mildly, this is a significant omission in an appeal of the reasonableness of a defendant's sentence. As a result of this omission, we are forced to rely on the comments of the trial court at sentencing to glean what we know of Jones's criminal history. As Jones did

MAY, J., and BRADFORD, J., concur

not challenge the accuracy of those comments on appeal, we proceed with the analysis based upon that information, however incomplete it may be.