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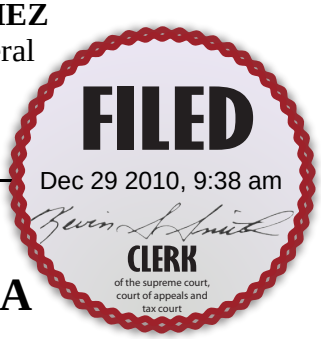

IN THE COURT OF APPEALS OF INDIANA

JOSEPH R. FABRE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-1005-CR-378
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause Nos. 48D03-0910-FB-335 and 48D03-0910-FD-336

December 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Joseph Fabre appeals his sentence following his convictions for possession of cocaine, as a Class C felony; two counts of possession of cocaine, as Class D felonies; and one count of possession of marijuana, as a Class A misdemeanor. He presents a single issue for our review, namely, whether the trial court abused its discretion when it sentenced him to an aggregate term of eleven years.[1]

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 29, 2008, Anderson police officers arrested Fabre after he admitted to carrying a handgun without a license and officers found two baggies of cocaine in his pocket. While out on bond pending trial for those offenses, on July 10, 2009, a police officer stopped Fabre in his car for a traffic violation. Fabre admitted to that officer that he had smoked a "blunt" moments before the stop, transcript at 7, and the officer found cocaine in Fabre's pocket and Xanax and marijuana hidden underneath the car seat.

Fabre ultimately entered into a joint plea agreement whereby he admitted to the lesser-included offense of possession of cocaine, as a Class C felony; two counts of possession of cocaine, as Class D felonies; and possession of marijuana, as a Class A misdemeanor. In exchange for Fabre's plea, the State dismissed the carrying a handgun without a license count. At sentencing, the trial court found "aggravating circumstances to exist as set out by the Prosecutor" and found no mitigating circumstances. The trial

[1] Fabre also alleges that his sentence is inappropriate in light of the nature of the offenses and his character, but he does not support that contention with cogent argument. In particular, Fabre omits any discussion of the nature of the offenses. Accordingly, that issue is waived. See Williams v. State, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008).

court sentenced Fabre as follows: eight years for Class C felony possession of cocaine, three years for each Class D felony possession of cocaine, and one year for Class A misdemeanor possession of marijuana. The trial court ordered that the sentences for the Class D felony counts and the Class A misdemeanor count would run concurrently and that those concurrent sentences would run consecutive to the sentence for the Class C felony count, for an aggregate term of eleven years. This appeal ensued.

DISCUSSION AND DECISION

Fabre contends that the trial court abused its discretion when it sentenced 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. Further, "the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence." Id. at 491.

Fabre first contends that the trial court abused its discretion when it did not identify his guilty plea as a mitigating circumstance. A trial court is free to disregard mitigating factors it does not find to be significant. See Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999). And Fabre carries the burden on appeal of showing that a disregarded mitigator is significant. See id. Fabre received a substantial benefit in exchange for his guilty plea, namely, the reduction of one charge to a lesser-included offense and the dismissal of another charge. See Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999) (no abuse of discretion in declining to give mitigating weight to guilty plea where defendant received benefits for her plea). Further, given the evidence against Fabre, his guilty plea was merely pragmatic. See id. (noting guilty plea does not rise to the level of significant mitigation where the evidence against the defendant is such that the decision to plead guilty is merely a pragmatic one). Fabre has not met his burden to show that his guilty plea was significant enough to require mitigating weight.

Fabre next contends that the trial court abused its discretion when it identified his criminal history as an aggravating circumstance. Fabre maintains that the trial court erred when it "did not indicate the instances of criminal activity upon which it relied in imposing the eleven (11) year sentence . . . [but] merely adopted the statements of the prosecutor concerning aggravating circumstances." Brief of Appellant at 12. Further, Fabre asserts that the trial court erred when it relied on juvenile adjudications without "establish[ing] the facts of those incidents of which the defendant was adjudicated true." Id. at 13. We address each contention in turn.

In Anglemyer, our supreme court noted the following with regard to the specificity with which the trial court shall identify aggravating circumstances at sentencing:

> As we have previously observed, "In order to carry out our function of reviewing the trial court's exercise of discretion in sentencing, we must be told of [its] reasons for imposing the sentence. . . . This necessarily requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions. Of course such facts must have support in the record."

868 N.E.2d at 490 (quoting Page v. State, 424 N.E.2d 1021, 1023 (Ind. 1981)). Here, rather than restating the details of Fabre's criminal history, the trial court adopted the Prosecutor's statement of those details in open court. The transcript of the sentencing hearing reveals that just minutes before the trial court imposed sentence, the Prosecutor recited the details of Fabre's criminal history. Fabre makes no contention that the Prosecutor misstated those details, but argues that the trial court should have restated them verbatim. Such a requirement would elevate form over function. Because we have a record sufficient to review the factual basis for the trial court's identification of Fabre's criminal history as an aggravator, there is no error.

Next, Fabre contends that the trial court improperly relied on his history of juvenile criminal activity in that there are no facts in the record to establish that Fabre committed criminal acts. However, our supreme court has held that a trial court may treat a defendant's juvenile record as an aggravating circumstance if the presentence investigation report contains specifics as to juvenile criminal activity and those specifics support evidence of a history of criminal activity. Davenport v. State, 689 N.E.2d 1226, 1232 (Ind. 1997). Here, Fabre's presentence investigation report sets out his juvenile history sufficiently to support the trial court's reliance on that history as an aggravating

circumstance. Fabre has not demonstrated that the trial court abused its discretion when it sentenced him.

Finally, to the extent Fabre contends that his sentence is inappropriate in light of his criminal history, the issue is waived. Fabre does not make any cogent argument to warrant our review under Indiana Appellate Rule 7(b). See Williams, 891 N.E.2d at 633. And we will not review the weight a trial court assigns a given aggravator on appeal, so we do not address Fabre's claim that his criminal history does not support an enhanced sentence. See Anglemyer, 868 N.E.2d at 493-94.

Affirmed.

DARDEN, J., and BAILEY, J., concur.