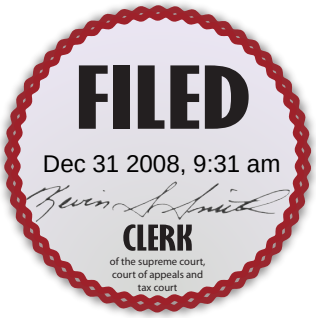

ATTORNEY FOR APPELLANT:

HILARY BOWE RICKS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ALEX O. JAMES
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

CHRISTOPHER TYLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0805-CR-468
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
The Honorable Stanley Kroh, Commissioner
Cause Nos. 49G03-0801-FC-3767
49G03-0803-FC-69749

December 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Christopher Tyler appeals his sixteen-year sentence following a guilty plea to two counts of operating a motor vehicle after license forfeited for life, both Class C felonies, possession of marijuana, a Class A misdemeanor, and resisting law enforcement, a Class D felony. Tyler raises two issues for our review: 1) whether the trial court abused its discretion in failing to identify his mental health as a significant mitigating factor and 2) whether his sentence is inappropriate. Concluding the trial court did not abuse its discretion when it sentenced Tyler and the sentence is not inappropriate, we affirm.

Facts and Procedural History

On January 4, 2008, Tyler was pulled over for speeding; the officer discovered Tyler's driver's license had been suspended for life and found three bags of marijuana in the driver's side door. Tyler resisted arrest until the officer informed him he would be tased if he continued to resist. On January 8, 2008, the State charged Tyler with one count of operating a motor vehicle after license forfeited for life, a Class C felony; one count of possession of marijuana, a Class A misdemeanor; and one count of resisting law enforcement, a Class A misdemeanor. On March 11, 2008, Tyler pled guilty to all three counts in exchange for a six-year cap on the total sentence and a three-year cap on executed time. The trial court accepted the plea agreement but did not enter judgment of conviction at that time. A sentencing hearing was scheduled for April 14, 2008.

On March 30, 2008, an officer initiated a traffic stop of a car driven by Tyler for weaving in and out of traffic. Tyler did not comply, eventually stopping in a parking lot and fleeing on foot. The officer pursued him, and Tyler continued to resist the officer,

tearing the officer's radio from his shoulder and throwing a punch at him. After administering pepper spray, the officer arrested Tyler with assistance from backup. On March 31, 2008, the State charged Tyler with one count of operating a motor vehicle after license forfeited for life, a Class C felony, one count of resisting law enforcement as a Class D felony, and two counts of resisting law enforcement as Class A misdemeanors.

On April 22, 2008, Tyler entered into a new plea agreement that covered both cases and pled guilty to both counts of operating a motor vehicle after license forfeited for life, one count of possession of marijuana, and one count of Class D felony resisting law enforcement. The plea agreement capped executed time at five years. At the sentencing hearing, Tyler argued that his mental health issues were a mitigating factor. The trial court found two significant mitigating factors: Tyler's acceptance of responsibility and the hardship his prolonged incarceration would cause to his terminally-ill mother. The trial court also found Tyler's criminal history to be a significant aggravating factor. The trial court concluded that Tyler's criminal history outweighed the mitigating factors. The trial court sentenced Tyler to the eight-year maximum for each operating a motor vehicle after license forfeited for life count, with five years suspended on the first count and six years suspended on the second count. The sentences for operating a motor vehicle after license forfeited for life were ordered to run consecutive to each other.[1] The trial court also ordered two years of probation subject to a mental health evaluation, substance abuse evaluation, and treatment. Tyler now appeals.

[1] Tyler was given concurrent sentences on the lesser counts.

Discussion and Decision

I. Propriety of Sentence

Sentencing decisions rest with the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218. We will conclude the trial court has abused its discretion 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." Hollin v. State, 877 N.E.2d 462, 464 (Ind. 2007) (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)). A trial court may impose any legal sentence "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). A trial court is still required, however, to issue a sentencing statement when sentencing a defendant for a felony. Ind. Code § 35-38-1-1.3; Anglemyer, 868 N.E.2d at 490. "If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating." Anglemyer, 868 N.E.2d at 490. The trial court may abuse its discretion if it omits "reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law." Id. at 490-91.

If a trial court does not consider mitigating factors clearly supported by the record, then it has abused its discretion. Anglemyer, 868 N.E.2d at 490. It is within a trial court's discretion, however, to determine both the existence and the weight of significant

mitigating factors. Ross v. State, 835 N.E.2d 1090, 1093 (Ind. Ct. App. 2005), trans. denied. An allegation that the trial court failed to identify a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Matshazi v. State, 804 N.E.2d 1232, 1239 (Ind. Ct. App. 2004), trans. denied. A trial court is not required to find mitigating factors or to give those factors the weight the defendant gives them. Fugate v. State, 608 N.E.2d 1370, 1374 (Ind. 1993). The trial court does not need to explain why it has found an argued-for mitigating factor is insignificant. Id.

Tyler contends that the trial court abused its discretion by failing to consider his mental illness as a mitigating factor. At the sentencing hearing, Tyler stated he has a mental illness during a colloquy touching on a variety of subjects, including his mother's illness and his request for work release. However, Tyler's mental illness is not clearly supported by the record. There is no documented medical evidence or expert testimony supporting Tyler's assertion that he has a mental illness, nor is there any demonstrable evidence of a nexus between a mental illness and the commission of his crimes. See Covington v. State, 842 N.E.2d 345, 349 (Ind. 2006) (factors to consider in weighing a mental health issue include the extent of the inability to control behavior, the overall limit on function, the duration of the illness, and the nexus between the illness and the crime). Given the mere lay testimony regarding Tyler's mental illness, the trial court did not abuse its discretion in failing to identify it as a significant mitigating factor.

II. Appropriateness of Sentence

"Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution 'authorize independent appellate review and revision of a sentence imposed by the trial court.'" Anglemyer, 868 N.E.2d at 491 (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)). When reviewing a sentence imposed by the trial court, we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). We have authority to "revise sentences when certain broad conditions are satisfied." Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005). When determining whether a sentence is inappropriate, we recognize that the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). We must examine both the nature of the offense and the defendant's character. See Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied. When conducting this inquiry, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. The burden is on the defendant to demonstrate that his sentence is inappropriate. Childress, 848 N.E.2d at 1080.

Here, the trial court imposed maximum sentences of eight years for Tyler's two Class C felony convictions. Because of the timing of the offenses, the sentences were required to be served consecutively. See Ind. Code § 35-50-1-2(d). Pursuant to the terms

of the plea agreement, however, the trial court suspended eleven years of the sixteen-year sentence.

As to the nature of the offenses, we note that after Tyler pled guilty, but prior to his sentencing for the January 4 offense of driving while suspended for life, he again drove a vehicle, resulting in the second set of charges. The offenses are more egregious than the typical driving while suspended for life offense because Tyler also resisted arrest on each occasion, raising the possibility of injury to police officers or bystanders.

As to Tyler's character, he has six prior misdemeanor convictions and nine prior felony convictions, including three Class D felony convictions for operating a vehicle while his license was suspended as an habitual violator and two Class C felony convictions for operating a vehicle after his license was forfeited for life. The significance of a defendant's criminal history "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." Wooley v. State, 716 N.E.2d 919, 929 n.4 (Ind. 1999). Clearly, Tyler's criminal history reflects poorly on his character, both because of the sheer number of convictions and the similar nature of the convictions to the instant offenses. Tyler's driver's license was suspended in 1998 and he has since shown a repeated disdain for the laws of our state by continuing to drive. After giving due consideration to the trial court's sentencing decision and to the nature of Tyler's offenses and his character, we conclude that Tyler has not met his burden of persuading this court that his sixteen-year sentence with eleven years suspended is inappropriate.

Conclusion

The trial court did not abuse its discretion when it did not recognize Tyler's mental health as a significant mitigating factor, and Tyler's sixteen-year sentence is not inappropriate.

Affirmed.

NAJAM, J., and MAY, J., concur.