

Appellant-Defendant Bryan Minier appeals his sentence imposed following his guilty plea to neglect of a dependent resulting in serious bodily injury as a Class B felony. We affirm.

The sole issue is whether the trial court abused its discretion in sentencing Minier.¹

In January 2004, while Minier was caring for his four-month-old son, J.K., Minier shook J.K. and caused J.K. to suffer hemorrhaging, blindness, and permanent brain damage. In October 2004, the State charged Minier with neglect of a dependent causing serious bodily injury as a Class B felony and battery as a Class B felony. Minier was released on bond pending trial.

Two years later, on the morning of his October 2, 2006, jury trial, Minier entered into a written plea agreement with the State. The plea agreement called for Minier to plead guilty to neglect of a dependent causing serious bodily injury as a Class B felony in exchange for the State's dismissal of the Class B felony battery charge, and it left sentencing to the trial court's discretion. Following Minier's entry of his plea, the trial court accepted the plea and entered judgment of conviction. Minier was again released on bond prior to sentencing.

The trial court held a sentencing hearing in February 2007. The trial court identified the following aggravating circumstances: (1) Minier was convicted of five

¹ Minier also raises a separate issue regarding whether a defendant who pleads guilty pursuant to a guilty plea where sentencing is left to the discretion of the trial court has the right to file a direct appeal to challenge the trial court's sentencing discretion. Clearly such a defendant has a right to appeal the trial court's sentencing discretion; thus, we will not address this issue.

misdemeanors while on bond in this case; (2) Minier was in arrears in his payment of child support; (3) the age of the victim; and (4) the victim's profound injuries. The trial court also recognized Minier's guilty plea, lack of felony criminal history, and work history as mitigators but did not assign substantial weight to them. After finding that the aggravators outweighed the mitigators, the trial court sentenced Minier to fifteen years in the Indiana Department of Correction. Minier now appeals his sentence.

The sole issue is whether the trial court abused its discretion when it sentenced Minier to fifteen years, which is five years above the presumptive ten-year term for a Class B felony.² Sentencing decisions rest within the discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Cotto v. State*, 829 N.E.2d 520, 524 (Ind. 2005). An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." *Pierce v. State*, 705 N.E.2d 173, 175 (Ind. 1998). In order for a trial court to impose an enhanced sentence, it must: (1) identify the significant aggravating factors and mitigating factors; (2) relate the specific facts and reasons that the court found those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. *Cotto*, 829 N.E.2d at 524-25.

Minier argues that the trial court erred by failing to find his good character as a mitigating circumstance and by failing to assign considerable mitigating weight to his guilty plea, work history, and lack of criminal history. Minier also contends that the trial

² We note that Minier committed his offense prior to the April 25, 2005, revisions of the sentencing statutes. Thus, we will apply the former presumptive sentencing scheme rather than the current advisory sentencing scheme. *See Guterth v. State*, 868 N.E.2d 427, 431 n. 4 (Ind. 2007) (explaining that the long-standing rule is that the sentencing statute in effect at the time a crime is committed governs the sentence for that crime).

court erred by finding J.K.'s injuries to be an aggravating circumstance. We will review each argument in turn.

1. *Mitigators*

Minier contends that the trial court erred by failing to find a mitigator and by improperly minimizing the weight of the mitigators it did find. Determining mitigating circumstances is within the discretion of the trial court. *Cotto*, 829 N.E.2d at 525. The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor, nor is the court required to give the same weight to proffered mitigating factors as the defendant does. *Id.* A trial court does not err in failing to find mitigation when a mitigation claim is "highly disputable in nature, weight, or significance." *Smith v. State*, 670 N.E.2d 7, 8 (Ind. 1996). An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Highbaugh v. State*, 773 N.E.2d 247, 252 (Ind. 2002).

Minier first contends that the trial court abused its discretion by not assigning considerable mitigating weight to his guilty plea. A guilty plea does not automatically amount to a significant mitigating factor. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). "[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, Minier received a benefit in light of the State's dismissal of the Class B felony battery charge. Thus, Minier's potential prison time was substantially reduced by his entry of a guilty plea. Furthermore, Minier did not plead guilty until the morning of trial, which was two years after he was charged. Accordingly, we cannot say that the trial court abused its discretion when it did not give mitigating weight to his guilty plea. *See, e.g., Wells*, 836 N.E.2d at 479-80; (finding no abuse of discretion where the trial court did not accord mitigating weight to the defendant's guilty plea where the defendant's decision to plead guilty was pragmatic); *Gillem v. State*, 829 N.E.2d 598, 605 (Ind. Ct. App. 2005) (holding that the trial court did not abuse its discretion in according no weight to the defendant's guilty plea where the defendant did not plead guilty until two years after his offense, thus causing the State spent significant time and resources on the case), *trans. denied*.

Minier further argues that the trial court erred by failing to assign significant mitigating weight to Minier's lack of criminal history. The trial court found Minier's lack of criminal history to be a mitigating circumstance but discounted the significance of this factor due to the fact that Minier was convicted of five misdemeanor convictions while on bond in this case. Furthermore, Minier admitted to shaking his four-month-old son to such an extent that he caused the infant to suffer hemorrhaging, blindness, and permanent brain damage. The trial court's decision to assign minimal aggravating weight to Minier's lack of prior convictions was not an abuse of discretion. *See Bunch v. State*, 697 N.E.2d 1255, 1258 (Ind. 1998) (finding no error where the trial court considered

defendant's lack of prior criminal history but declined to accord it significant weight), *reh'g denied*.

Additionally, Minier contends that the trial court erred by minimizing the significance of his work history. When finding mitigating factors, the trial court recognized Minier's work history as "admirable," but concluded that there was no nexus between the work history and Minier's crime that entitled it to significant mitigating weight. Appellant's Appendix at 1. Minier makes no argument as to why his work history is a significant mitigating circumstance. Thus, the trial court did not abuse its discretion when it declined to assign it significant mitigating weight.

Finally, Minier argues that the trial court erred by not finding his "good character" to be a mitigating factor. Appellant's Brief at 8. Minier points to the testimony from his boss, who stated that Minier was a gentle and honest man. However, Minier fails to acknowledge the other portions of the record that indicate that he was convicted of five misdemeanor offenses while on bond in this case, that he was in arrears on his child support despite being employed, and that he caused profound life-altering injuries to his defenseless four-month-old son by shaking him. Because Minier's proposed good character mitigator was highly disputable in nature, weight, and significance and was not supported by the record, we conclude that the trial court did not abuse its discretion by failing to find it to be a mitigator.

2. *Aggravator*

Minier only challenges one of the four aggravating factors found by the trial court. Minier argues that the trial court erroneously considered J.K.'s injuries as an aggravating

circumstance because the neglect of a dependent charge was elevated to a Class B felony based on the serious bodily injury. Minier is correct that a material element of a crime may not also constitute an aggravating circumstance. *Ellis v. State*, 707 N.E.2d 797, 804 (Ind. 1999). However, “even when serious bodily injury is an element of the crime charged, the severity of the injury may serve as a valid aggravating circumstance.” *Patterson v. State*, 846 N.E.2d 723, 731 (Ind. Ct. App. 2006) (relying on *Lang v. State*, 461 N.E.2d 1110, 1113 (Ind. 1984)). In *Patterson*, we held that it was not an abuse of discretion for the trial court to consider as an aggravator that “[t]he crime resulted in consequences beyond serious bodily injury, i.e., death.” 843 N.E.2d at 728. *See also Lang v. State*, 461 N.E.2d 1110, 1113 (Ind. 1984) (holding that it was appropriate for the trial court to consider the severity of the injuries even though the injuries constituted the basis of raising the offense from a Class C felony to a Class A felony). Furthermore, “facts evidencing the particular brutality of the attack and severity of the resulting injury may be considered as an aggravating factor” regarding the nature and circumstances of the crime. *See Hulfacher v. State*, 813 N.E.2d 1204, 1209 (Ind. Ct. App. 2004).

As the trial court explained in its sentencing order, J.K.’s injuries were “profound:”

Those injuries include damage to eighty-five (85%) percent of his brain, resulting in the loss of his ability to sit or stand unaided by a brace, loss of his ability to walk, loss of his ability to speak, loss of his ability to take nourishment orally, and loss of his ability to breathe without the assistance of a respirator. Moreover, [Minier’s] assault on this child resulted in the foreshortening of his anticipated life span and necessitates constant care while he remains alive.

Appellant's Appendix at 1. While "serious bodily injury" is an element of Minier's offense, it is clear that Minier's crime resulted in consequences beyond serious bodily injury. Indeed, J.K. suffered multiple serious bodily injuries. Due to the severity of these injuries, we conclude that the trial court did not abuse its discretion by finding this factor to be an aggravating circumstance.

Affirmed.

BARNES, J., and VAIDIK, J., concur.