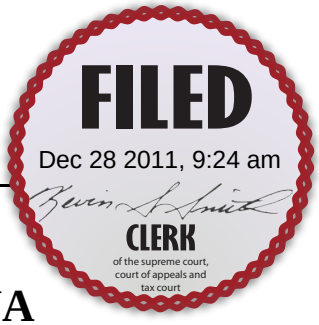
ATTORNEY FOR APPELLANT:

JOHN T. WILSON
Anderson, Indiana

ATTORNEY FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KATHERINE MODESITT COOPER
Deputy Attorney General
Indianapolis, Indiana



IN THE COURT OF APPEALS OF INDIANA

KEVIN HOUNSHELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 33A01-1105-CR-208
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HENRY SUPERIOR COURT
The Honorable Bob A. Witham, Judge
Cause No. 33D02-1005-FD-110

December 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Kevin Hounshell agreed to plead guilty to operating a vehicle as a habitual traffic violator, operating a vehicle while intoxicated, and a habitual substance offender enhancement, and the State agreed to dismiss several other charges. The trial court imposed an aggregate sentence of five years executed. Hounshell appeals his sentence, claiming that the trial court abused its discretion in its treatment of his guilty plea and his drug addiction. He further claims that the trial court abused its discretion in failing to consider community corrections as an alternative to incarceration. Finding no abuse of discretion, we affirm.

Facts and Procedural History

On May 10, 2010, the State charged Hounshell with the following: Count I, operating a motor vehicle as a habitual traffic violator, a class D felony; Count II, operating a vehicle while intoxicated, a class A misdemeanor; Count III, operating a vehicle with elevated blood or breath alcohol, a class A misdemeanor; Count IV, public intoxication, a class B misdemeanor; Count V, false/fictitious registration, an infraction; Count VI, seat belt violation, an infraction; and Count VII, driving without proof of insurance, an infraction. The State also filed a habitual substance offender allegation based on Hounshell's prior unrelated substance offense convictions.

On April 11, 2011, pursuant to a written plea agreement, Hounshell pled guilty to Counts I and II and admitted to the habitual substance offender enhancement. The State dismissed Counts III through VII and a prior pending charge for operating a vehicle as a habitual traffic violator, a class D felony. The parties agreed that the State would recommend

a five-year executed sentence and that the trial court would be "free to assess any sentence within the range of possibilities greater than the recommended sentence," but that "the additional sentence over the recommended sentence [would] be suspended." Appellant's App. at 10. Hounshell expressed his willingness to engage in counseling for his substance abuse. The trial court found Hounshell's guilty plea to be a mitigating factor and his criminal history to be an aggravating factor. The court determined that the aggravating factor outweighed the mitigating factor and sentenced Hounshell to two years on Count I and one year on Count II, to be served concurrently, and imposed a habitual substance offender enhancement of three years, for an aggregate sentence of five years, all executed. The court ordered that this sentence be served consecutive to a sentence that Hounshell is currently serving in Wayne County. The court also recommended that Hounshell be considered for any available substance abuse programs or any substance abuse treatment. This appeal ensued.

Discussion and Decision

"[S]entencing decisions rest within 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. "So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." *Id.* 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.* (citation omitted).

A trial court may abuse its discretion by failing to enter a sentencing statement at all, explaining reasons for imposing a sentence not supported by the record, or if "the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration." *Id.* at 491. If the trial court does not find a mitigating factor to exist after it has been argued, "the trial court is not obligated to explain why it has found that the factor does not exist." *Id.* at 493 (quoting *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993)). Allegations that the trial court failed to weigh factors properly are not reviewable for an abuse of discretion. *Id.* at 491.

Hounshell argues that his "guilty plea coupled with his substance abuse addiction as a mitigator outweighed the aggravators." Appellant's Br. at 9. To the extent Hounshell claims that the trial court gave insufficient weight to his guilty plea as a mitigating factor and gave too much weight to his criminal history as an aggravating factor, those claims are not reviewable on appeal. *Anglemyer*, 868 N.E.2d at 491. To the extent Hounshell argues that the trial court abused its discretion in failing to consider his drug addiction as a mitigating factor, we note that "[a]n 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." *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999).

The record clearly supports Hounshell's assertion that he has substance abuse problems. His presentence investigation report indicates that he started drinking alcohol when he was thirteen years old, has been a heavy drinker and marijuana user during his adult life, and has been using heroin and opiates for the past three years. Appellant's App. vol. II

at 7. During his sentencing hearing, Hounshell stated that he received inpatient treatment in Virginia for seven months in 2008. He also noted that he had accumulated multiple arrests in 2009 and 2010 because he had gotten addicted to pain pills and he was "not in [his] right state of mind" so he "screwed up." Tr. at 18. Although his drug addiction is certainly supported by the record, Hounshell has failed to establish that this evidence is significantly mitigating. In fact, "[a] history of substance abuse may constitute a valid aggravating factor." *Roney v. State*, 872 N.E.2d 192, 199 (Ind. Ct. App. 2007), *trans. denied*. Hounshell's repeated alcohol- and drug-related crimes and unsuccessful attempts at rehabilitation suggest that he continues to show little regard for the law. His attempts at treatment have not resulted in a reduction of crime, but rather an increase in the number of arrests in recent years. His record suggests that his series of arrests, convictions, and sentences has done little to deter him from committing additional similar offenses. Consequently, we find no abuse of discretion here.

Hounshell further argues that the trial court abused its discretion in failing to consider community corrections as an alternative to incarceration. "[A] defendant is not entitled to serve his sentence in a community corrections program but, as with probation, placement in the program is a 'matter of grace' and a 'conditional liberty that is a favor, not a right.'" *Million v. State*, 646 N.E.2d 998, 1001-02 (Ind. Ct. App. 1995) (citations omitted). Based on Hounshell's lifelong substance abuse problems and extensive criminal history, we find no abuse of discretion on this point. Therefore, we affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.