

STATEMENT OF THE CASE

Appellant-Defendant, Dominick L. Wilson (Wilson), appeals his sentence for voluntary manslaughter, a Class A felony, Ind. Code § 35-42-1-3.

We affirm.

ISSUE

Wilson raises one issue on appeal, which we restate as follows: Whether the trial court improperly identified aggravating and mitigating factors when it sentenced Wilson.

FACTS AND PROCEDURAL HISTORY

On December 6, 2008, Wilson, his brother Raynard Wilson, Laura Lange, and Jessica Vaughn (Vaughn) were at Vaughn's apartment in Michigan City, Indiana. That afternoon, the four arranged to purchase one pound of marijuana for \$1,300 from Juan Luis Rodriguez (Rodriguez) and agreed to meet Rodriguez at Antwoine Wilson's apartment to make the exchange. At approximately 4:45 p.m., Wilson and Matthew Andino met with Rodriguez and got into a dispute about the marijuana and the money. Wilson shot Rodriguez in the back, and Rodriguez died as a result of his injuries. Afterwards, it was determined that Rodriguez had not been armed.

On December 13, 2008, the State filed an Information charging Wilson with Count I, murder, I.C. § 35-44-2-1 and Count II, murder in the perpetration of robbery, I.C. § 35-44-2-1. On February 28, 2011, a jury trial commenced. However, on March 1, 2011, Wilson entered into a written plea agreement with the State before the trial had ended. Pursuant to the plea agreement, the State filed an Amended Information charging Wilson

with Count III, voluntary manslaughter, a Class A felony, I.C. § 35-42-1-3, to which Wilson pled guilty. In exchange, the State dismissed Counts I and II but left sentencing to the discretion of the trial court.

On April 1, 2011, the trial court conducted a sentencing hearing and sentenced Wilson to forty years imprisonment, with two of those years suspended to probation. In its sentencing statement, the trial court found the following aggravating factors: (1) that Wilson had a history of misdemeanor convictions and was on bond for conversion in LaPorte County at the time he committed the instant offense; and (2) the nature and circumstances of the crime. The trial court considered this second factor “significant” and noted that

[Wilson] shot the victim at point blank range in the back over a dispute during a marijuana purchase. The victim was unarmed. The [c]ourt believes that sudden heat played a minimum role in this killing in that [Wilson’s] intentions were clearly to rob the victim of his drugs and money.

(Appellant’s App. p. 83). As mitigating factors, the trial court found that: (1) Wilson had no history of felony adult convictions; (2) Wilson admitted his guilt by entering into a plea agreement; and (3) the victim was involved in the illegal act of dealing in marijuana at the time of his death.

Wilson now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Wilson argues that the trial court abused its discretion when it sentenced him because it improperly identified aggravating and mitigating factors. Under Indiana’s prior sentencing regime, trial courts were required to properly weigh aggravating and

mitigating factors. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Now, under the advisory sentencing scheme, trial courts no longer have such an obligation. *Id.* Instead, “once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then ‘impose any sentence that is . . . authorized by statute; and . . . permissible under the Constitution of the State of Indiana.’” *Id.* A trial court abuses its discretion when its sentencing decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Heyen v. State*, 936 N.E.2d 294, 299 (Ind. Ct. App. 2010), *trans. denied*.

In light of this standard, we cannot agree with Wilson that the trial court improperly sentenced him.

I. *Aggravating Factors*

Wilson argues that the trial court improperly found the nature of his offense to be an aggravating factor because the aggravating circumstance also constituted an element of his offense. To convict Wilson of voluntary manslaughter as a Class A felony, the State was required to prove that Wilson “knowingly or intentionally . . . kill[ed] another human being . . . while acting under sudden heat . . . by means of a deadly weapon.” I.C. § 35-42-1-3. The circumstances which the trial court believed justified an aggravated sentence were that Wilson had intended to rob the victim prior to the shooting and that Wilson shot the victim in the back at point blank range. On appeal, Wilson argues that the finding of sudden heat minimizes the evidence as to his premeditated intent to rob

Rodriguez because it is contradictory to find both premeditation and “sudden heat.” He also argues that there is no evidence as to why the shooting occurred in the manner it did.

As a preliminary matter, we note that neither Wilson’s intent to rob Rodriguez nor the fact that he shot Rodriguez in the back at point blank range is an element of voluntary manslaughter, contrary to Wilson’s assertions. *See* I.C. § 35-42-1-3. Instead, they relate to the manner of the offense, which can be an appropriate aggravating factor. *See Phelps v. State*, 914 N.E.2d 283, 292 (Ind. Ct. App. 2009) (“[t]rial courts clearly are allowed to consider various circumstances relating to the nature of the crime when determining sentences.”) In regards to Wilson’s claim that it was contradictory for the trial court to find that he had a premeditated intent to rob Rodriguez prior to the shooting while also finding that he acted out of sudden heat, we note that the intent to rob a victim is different than the intent to commit voluntary manslaughter. *See* I.C. § 35-42-5-1. Accordingly, we conclude that it is possible for a defendant to form a premeditated intent to commit robbery and to also kill a person under “sudden heat.” The two propositions are not contradictory as Wilson claims. Therefore, we find that the trial court did not contradict itself or abuse its discretion in considering Wilson’s intended robbery as an aggravating factor.

With regards to Wilson’s argument that there was no evidence concerning his reasoning for shooting Rodriguez in the back, the trial court does not have to find a reason why Wilson shot Rodriguez in the back. Nevertheless, the trial court described the shooting as “essentially an ambush.” (Tr. p. 58). The trial court specifically noted

that it wanted to “make it clear that [it] did not believe that [Wilson] was afraid of [Rodriguez] at that moment in time.” (Tr. p. 54). The facts support the trial court’s interpretation; therefore, its decision is not “clearly against the logic and effect of the facts and circumstances before the trial court.” *See Heyen*, 936 N.E.2d at 299.

II. *Mitigating Factors*

Next, Wilson argues that the trial court’s sentence was improper because the trial court failed to consider his remorse, his age, and his subsequent commitment to changing his behavior as mitigating factors. In order to show that a trial court failed to identify or find a mitigating factor, the defendant must establish that the mitigating evidence is both significant and clearly supported by the record. *Anglemeyer*, 868 N.E.2d at 493. Although a failure to find mitigating circumstances clearly supported by the record may imply that the trial court improperly overlooked them, a trial court “is not obligated to explain why it has chosen not to find mitigating circumstances. Likewise, the [trial] court is not obligated to accept the defendant’s argument as to what constitutes a mitigating factor.” *Id.*

A defendant’s youth, although not identified as a statutory mitigating circumstance, is a significant mitigating circumstance in some circumstances. *Brown v. State*, 720 N.E.2d 1157, 1159 (Ind. 1999). However, youth is not automatically a significant mitigating circumstance. *Smith v. State*, 872 N.E.2d 169, 178 (Ind. Ct. App. 2007). As our supreme court has observed, “[t]here are both relatively old offenders who seem clueless and relatively young ones who appear hardened and purposeful.” *Ellis v.*

State, 736 N.E.2d 731, 736 (Ind. 2000). Here, Wilson’s defense attorney specifically requested that the trial court consider Wilson’s age, as well as the testimony of Terry Machowicz (Machowicz), a chaplain at the jail, that Wilson was remorseful and dedicated to turning his life around. Due to this request, it is clear that the trial court considered the issue and declined to follow the defense counsel’s suggestions. Our supreme court has noted that “[i]f the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist.” *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993).

Moreover, there are facts in the record supporting the trial court’s decision to not follow the defense counsel’s suggestions. Although Wilson was only 21 years old at the time of his offense, his actions could be interpreted as hardened and purposeful. He purposefully engaged in a drug deal to purchase a significant amount of marijuana, and there is evidence that he decided to rob Rodriguez before the exchange even occurred. There is no evidence in the record that he was coerced into his actions by an older and more authoritative person. Instead, it is apparent that he organized the crime himself and then shot Rodriguez in the back when Rodriguez was unarmed.

With respect to Wilson’s remorse and determination to change, the trial court was in the best position to determine the credibility of Wilson and Machowicz when they

testified at the sentencing hearing. Accordingly, we conclude that the trial court did not abuse its discretion and that the trial court properly sentenced Wilson.¹

CONCLUSION

Based on the foregoing, we conclude that the trial court properly sentenced Wilson.

Affirmed.

NAJAM, J. and MAY, J. concur

¹ In two sentences, Wilson also refers to Appellate Rule 7(B), which allows this court to revise a defendant's sentence if the sentence is inappropriate in light of the nature of the defendant's offense and his character. However, Wilson fails to develop his argument with respect to Appellate Rule 7(B), so we consider it waived. *See Perry v. State*, 921 N.E.2d 525, 528 (Ind. Ct. App. 2010).