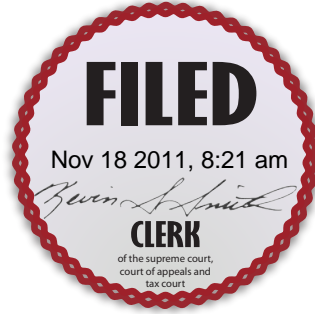


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

PATRICIA ABRAM,)
)
Appellant-Defendant,)
)
vs.) No. 49A04-1103-CR-122
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Reuben B. Hill, Judge
The Honorable Mary Ann G. Oldham, Master Commissioner
Cause No. 49F18-1008-FD-63469

November 18, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Patricia Abram (“Abram”) was convicted after a bench trial of theft¹ as a Class D felony and was sentenced to 730 days with 90 days executed and 640 days suspended to probation. Abram appeals, raising the following restated issue: whether the trial court abused its discretion in sentencing her because she claims it failed to provide a sentencing statement.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 13, 2010, Kristin Scoleri (“Scoleri”), a loss prevention manager for Gap, was working at the Gap Kids store in the Castleton Mall in Marion County, Indiana. Scoleri observed Abram pacing back and forth just outside the store entrance to the mall. Abram was carrying an empty Macy’s shopping bag. Scoleri also observed another woman inside of the store with a large amount of girls’ merchandise. The woman waved at Abram to come into the store. Abram entered the store, met with the woman, and they both went into a corner of another room in the store. Scoleri then observed Abram open the empty Macy’s bag and both women stuffing the merchandise that the other woman had been carrying into the Macy’s bag. Abram put her hand inside the bag to arrange the merchandise and fix the bag. Abram then walked out of the store with the bag and into the mall while the other woman remained inside the store. Scoleri followed Abram out of the store and past all points of sale. Abram made no effort to pay for the merchandise in the bag.

¹ See Ind. Code § 35-43-4-2.

Once outside the store, Scoleri approached Abram, identified herself as Gap loss prevention manager, and took the Macy's bag away from Abram. Abram told Scoleri that her purse was inside the bag, and Scoleri gave Abram the purse she found in the bag. Scoleri asked Abram to come back into the store with her, but Abram did not do so. Abram told Scoleri that if Scoleri continued to follow her, Abram would punch Scoleri in the face. Abram then walked away. Scoleri waved down a police officer who was in the mall, and he helped Scoleri bring Abram back to the store. Inside the store, Scoleri emptied the Macy's bag and found twelve items of Gap merchandise that Abram did not pay for, which were worth \$217.00.

On August 14, 2010, the State charged Abram with theft as a Class D felony. A bench trial was held, and at the conclusion of the trial, Abram was found guilty as charged. The trial court sentenced Abram to 730 days, with 90 days executed and 640 days suspended to probation, and to twenty-five hours of community service. Abram now appeals.

DISCUSSION AND DECISION

Sentencing 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 (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.* One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. *Id.* 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. *Id.* at 490-91. “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 491.

Abram argues that the trial court abused its discretion because it failed to provide a sentencing statement. She contends that, when the trial court sentenced her, it failed to provide any kind of sentencing statement indicating its reasons for imposing a sentence that exceeded the advisory. Abram therefore asserts that her sentence should be vacated.

In reviewing a sentencing decision, we are not limited to the written sentencing statement, but may consider the trial court’s comments in the transcript of the sentencing proceedings. *Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002). We will examine both the written sentencing order and the trial court’s comments at the sentencing hearing to determine whether the trial court adequately explained the reasons for the sentence. *Davis v. State*, 851 N.E.2d 1264, 1267 (Ind. Ct. App. 2006), *trans. denied*.

In the present case, during the trial, Abram admitted on cross-examination that she had a prior conviction for conversion. *Tr.* at 13. On redirect examination, she stated that she had a conversion conviction in 2009 and another conviction in “the [19]80s.” *Id.* During sentencing, Abram’s counsel stated that she had a short criminal history. *Id.* at

16-17. The trial court orally stated that it found no mitigating circumstances, but did find Abram's prior conviction as the only aggravating circumstance. *Id.* at 21. The trial court sentenced Abram to 730 days, with 90 days executed and 640 days suspended to probation, and to 25 hours of community service. *Id.* at 20.

Therefore, although the trial court did not provide a written sentencing statement, it did make an oral statement at sentencing, finding that there was one aggravating factor and no mitigating factors. It is preferential for a trial court to provide a complete sentencing statement in writing, and we encourage the trial court to be more thorough in future sentencings. We conclude, however, that the oral sentencing statement in the present case was minimally adequate. The trial court did not abuse its discretion in sentencing Abram.

Affirmed.

BAKER, J., and BROWN, J., concur.