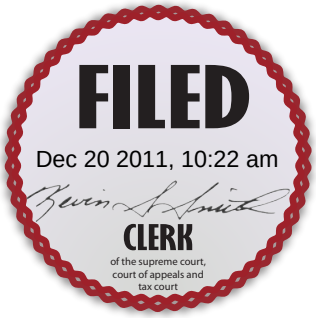

ATTORNEY FOR APPELLANT:

SCOTT J. LENNOX
Reed & Earhart Attorneys at Law, P.C.
Warsaw, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

IAN McLEAN
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

CHRISTOPHER W. HOVIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 92A03-1011-CR-613
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WHITLEY CIRCUIT COURT
The Honorable James R. Heuer, Judge
Cause No. 92C01-0212-FC-201

December 20, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Christopher W. Hovis (Hovis), appeals his sentence for assisting a criminal, a Class C felony, Ind. Code § 35-44-3-2.

We affirm.

ISSUES

Hovis raises three issues, which we consolidate and restate as the following two issues:

(1) Whether the trial court properly sentenced Hovis; and

(2) Whether the State violated the terms of its plea agreement with Hovis.

FACTS AND PROCEDURAL HISTORY

On July 9, 2002, Hovis, Ronrico Hatch (Hatch), James Piatt (Piatt), and two unnamed persons visited a cornfield in Whitley County, Indiana under the guise of locating marijuana in the cornfield. According to Hovis, Hatch and Piatt were involved in a dispute over marijuana money. While walking through the cornfield, Hatch fired several gunshots at Piatt, and Piatt shot Hatch once. Piatt was fatally wounded, and Hatch received a bullet wound in his abdomen. Hovis left Piatt's body in the cornfield and took Hatch to a hospital, where he claimed that Hatch had been shot by an unknown person in Shoaff Park, located in Fort Wayne, Indiana.

The following day, on July 10, 2002, Hovis and his brother took Piatt's car and drove to Whitley County, where they set the car ablaze and destroyed it. On July 11, 2002, Hovis and his brother returned to the cornfield with the intention of killing Piatt if

he were still alive. Piatt was dead when they found him, so they dragged his body further into the cornfield where it would not be visible from the road. Piatt's body remained there for 47 days until it was discovered on August 25, 2002. At that point, Piatt's body had decomposed to the extent that it could not be embalmed and Piatt's mother was unable to have an open casket for Piatt's funeral. Piatt's family searched the cornfield and found two pieces of Piatt's braided hair, one of which was attached to part of Piatt's skull.

On December 19, 2002, the State filed an Information charging Hovis with Count I, assisting a criminal, a Class C felony, I.C. § 35-44-3-2; Count II, arson, a Class D felony, I.C. § 35-43-1-1(d); Count III, moving a body, a Class D felony, I.C. § 36-2-14-17(b); and Count IV, habitual offender. On January 2, 2003, the trial court held an initial hearing, at which point Hovis entered a plea of not guilty. On June 23, 2003, Hovis filed a motion to withdraw his former plea of not guilty and to enter a plea of guilty to all Counts.

On August 25, 2003, the trial court held a sentencing hearing and merged Hovis' convictions for Counts II and III with Count I, finding that the same factual bases supported each conviction. The trial court sentenced Hovis to eight years for assisting a criminal, with an enhancement of twelve years for being an habitual offender. In total, Hovis received a sentence of 20 years' incarceration in the Indiana Department of Correction, with no time suspended. In its sentencing statement, the trial court found the following aggravating factors: (1) Hovis' extensive juvenile record; (2) his adult criminal

record; (3) the fact that he was on probation when he committed the offense; (4) his history of violating the terms of probation and suspended sentences; (5) his substance abuse history; (6) the additional grief caused to Piatt's family by Hovis' attempts to delay police efforts to locate Piatt's body; and (7) Hovis' lack of remorse. The trial court did not find any mitigating factors.

On February 6, 2006, Hovis filed a petition for post-conviction relief raising issues regarding his sentencing. In a letter to Hovis dated February 28, 2006, Deputy Public Defender Jeffrey R. Wright informed Hovis of his right to a direct appeal of his sentence. Accordingly, on August 17, 2009, Hovis filed a petition to file a belated notice of appeal, which the trial court granted on August 19, 2009.

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

DISCUSSION AND DECISION

I. *Sentence*

Wilson argues that the trial court abused its discretion when it sentenced him because the trial court 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*.

A. *Aggravating Factors*

First, Hovis argues that the trial court improperly found that the grief he caused Piatt's family was an aggravating factor because his actions in hiding Piatt's body constituted both the basis for the Piatt family's grief and an element of his charge of assisting a criminal. In Indiana, courts have held that it is an abuse of discretion for a sentencing court to consider as aggravating factors those factors which are also elements of an underlying offense. *See Tidmore v. State*, 637 N.E.2d 1290, 1291 (Ind. 1994). However, we have also noted that a trial court is permitted to consider the manner of an offense as an aggravating factor. *See Phelps v. State*, 914 N.E.2d 283, 292 (Ind. Ct. App. 2009).

In order to convict Hovis for assisting a criminal as a Class C felony, the State was required to prove that Hovis "with the intent to hinder the apprehension or punishment of [a criminal], harbor[ed], conceal[ed], or otherwise assist[ed] [the criminal]" and that the criminal committed murder. I.C. § 35-44-3-2. Hovis' effort to drag Piatt's body into the cornfield in order to hinder law enforcement efforts was sufficient to support a conviction for assisting a criminal. However, the condition of Piatt's body as a result of Hovis' actions was particularly gruesome and disturbing to Piatt's family—and therefore related

to the nature of Hovis' offense rather than the element of assisting a criminal. Virginia Shull, a close friend of Piatt's family testified that:

> we can wear the shirts, we can show the pictures, but in our mind's eye, all we see is how he was found, literally, physically, how his body was found . . . . [Piatt] was gone by then, but his family deserved a proper burial for their son, their brother, anybody that cared about him. [T]hey did not get that . . . . There's a hole there, there's no closure here. His bones are down there. There's not, he couldn't even be embalmed . . . . I guess the effect of the actions that happened when [Hovis] moved that body will always be there. They will never go away. No matter how much time [Hovis] serve[s], in our mind's eye, we'll see [Piatt's] body decomposed and animals getting to it and tearing it apart. His mother and sister and Terry . . . went through the field and found two braids . . . . They smelled from being out there. Part of his skull was attached to one of them that his mother had, and they hold it deeply, dearly to their hearts, because that's all they have left of him, physically.

(Transcript pp. 20-21). We find that these circumstances are beyond those necessary to constitute an element of assisting a criminal and relate to the nature of the crime rather than its execution. Therefore, we conclude that the trial court did not abuse its discretion in finding that the grief Hovis caused Piatt's family was an aggravating factor.

Moreover, assuming arguendo that it was an improper aggravator, six other aggravators remain which are sufficient to uphold Hovis' sentence.

B. *Blakely Rights*

Next, Hovis argues that three of the trial court's aggravating factors violate his *Blakely* rights. In *Blakely*, the United States Supreme Court held that a trial court may not enhance a sentence based on additional facts, unless those facts are either: (1) a prior conviction, (2) facts found by a jury beyond a reasonable doubt; (3) facts admitted by the defendant; or (4) facts found by the sentencing judge after the defendant has waived

Apprendi rights and consented to judicial factfinding. *Blakely v. Washington*, 542 U.S. 296 (2004). Hovis was sentenced under a sentencing scheme that was later invalidated by *Blakely* and, accordingly, he argues that his sentence violates his *Blakely* rights. *See Gutermuth v. State*, 868 N.E.2d 427, 431 (Ind. 2007). However, our supreme court has held that belated appeals of sentences that were entered before *Blakely* was issued are not subject to the holding in that case. *Gutermuth*, 868 N.E.2d at 428. Here, the trial court sentenced Hovis on August 25, 2003, and the United States Supreme Court did not decide *Blakely* until June 24, 2004, almost a year later. As Hovis filed a belated appeal, we deem his arguments with respect to the trial court's alleged *Blakely* violations waived.

C. *Mitigating Factors*

Hovis also argues that the trial court should have found that his guilty plea and his cooperation with authorities were 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. *Anglemyer*, 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.*

Indiana courts have held that a defendant's decision to plead guilty, especially when it provides a benefit to the State, may be considered a mitigating circumstance.

Trueblood v. State, 715 N.E.2d 1242, 1257 (Ind. 1999), *reh'g denied, cert. denied*, 531 U.S. 858 (2000). A guilty plea is not necessarily a mitigating factor, though, where the defendant receives a substantial benefit from the plea or where the evidence against the defendant is so strong that the decision to plead guilty is merely pragmatic. *Amalfitano v. State*, 956 N.E.2d 208, 212 (Ind. Ct. App. 2011).

According to the statements of Hovis, Hovis' brother Benjamin, and two unnamed individuals, Hovis drove Hatch to the hospital following Hatch's murder of Piatt, destroyed Piatt's car, and pulled Piatt's body deep into the cornfield where it would not be visible. Fort Wayne City Police personnel confirmed that they took a report from Hovis that Hatch had been shot by an unknown party in Shoaff Park on July 9, 2002, and Union Township firemen confirmed that they responded to a burning car at the approximate location of 600 East and Schrader Road on July 10, 2002. In light of this substantial evidence against Hovis, it was pragmatic for Hovis to plead guilty and cooperate with authorities. Therefore, we conclude that the trial court did not abuse its discretion when it denied to consider Hovis' guilty plea and cooperation with authorities as mitigating factors.[1]

II. *Plea Agreement*

Finally, Hovis points to the State's recommendation that he receive the maximum sentence possible for a Class C felony as evidence that the State violated a term of his

[1] Hovis also argues that the trial court failed to properly weigh the aggravating and mitigating factors. We will not address this issue as the trial court is not required to properly weigh aggravating and mitigating factors. *See Anglemyer*, 868 N.E.2d at 491.

plea agreement that specified that the State would not make a recommendation at his sentencing hearing. The plea agreement submitted to the trial court had a section regarding sentencing where the words "as a result of a [p]lea [a]greement, the [p]rosecutor will recommend," are typed, and the word "None" is handwritten underneath. (Appellant's App. p. 16). We cannot agree with Hovis' argument because we conclude that the statement "None" indicates that Hovis and the State did not have an agreement on sentencing, not that the State had agreed to stay silent during the sentencing hearing. Our interpretation is supported by Hovis' characterization of his plea as "open." (Appellant's Br. p. 12). Accordingly, we conclude that the State did not violate the terms of Hovis' plea agreement.

CONCLUSION

Based on the foregoing, we conclude that (1) the trial court properly sentenced Hovis; and (2) the State did not violate the terms of its plea agreement with Hovis.

Affirmed.

FRIEDLANDER, J. and MATHIAS, J. concur