MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Katherine N. Worman
Evansville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert M. Yoke
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Steven Pace,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 2, 2023

Court of Appeals Case No. 22A-CR-3075

Appeal from the Vanderburgh Circuit Court

The Honorable David D. Kiely, Judge

Trial Court Cause No. 82C01-2102-F4-578

Memorandum Decision by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

[1] Steven Pace pleaded guilty without a plea agreement to attempted arson, a Level 4 felony and was sentenced to the advisory term of six years imprisonment. Pace appeals his sentence, claiming that the trial court abused its discretion in disregarding three mitigating circumstances. He also challenges his sentence as inappropriate. We affirm, finding no sentencing error and rejecting Pace's request for a sentence revision.

Facts

[2] Pace attempted to set fire to a home while police were outside investigating an unrelated offense. When police entered the home, Pace was holding an open bottle of vodka in the kitchen while a fire burned at his feet. A dark substance with the consistency of motor oil had been spread around the area of the fire, and a burnt book was nearby. Additionally, one of the kitchen stove's burners was on, set on high, and appeared to have burnt paper on it. Police extinguished the fire quickly and arrested Pace, who has a history of mental illness.

[3] The State charged Pace with attempted arson, a Level 4 felony. *See* Ind. Code §§ 35-43-1-1(a)(1), 35-41-5-1. Pace pleaded guilty as charged, and the court sentenced him to six years imprisonment. Pace appeals his sentence.

Discussion and Decision

[4] Pace contends the trial court abused its discretion by overlooking three mitigating circumstances that he claims were supported by the record. He also challenges his sentence under Indiana Appellate Rule 7(B) as inappropriate in light of the nature of the offense and the character of the offender. We conclude that neither argument warrants relief.

I. No Abuse of Discretion

[5] "[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). A sentencing court abuses its discretion, among other ways, by entering a sentencing statement that: 1) includes reasons unsupported by the record; 2) omits reasons clearly supported by the record and advanced for consideration; or 3) is based on reasons improper as a matter of law. *Id.* at 490-91.

[6] Pace argues that the trial court disregarded: (1) his alleged 13 years of law-abiding behavior before the instant offense; and (2) that his offense did not result in any injury or property damage. *See* Ind. Code § 35-38-1-7.1(b)(6) (specifying as an available mitigating circumstance that the defendant "has led a law-abiding life for a substantial period before commission of the crime"); Ind. Code § 35-38-1-7.1(b)(1) (designating as a mitigating circumstance that "[t]he crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so"). Pace has waived these claims

by not raising them at sentencing—a prerequisite to finding an abuse of discretion on appeal based on their omission from the trial court's sentencing statement. *Anglemyer,* 868 N.E.2d at 490, 492.

[7] Waiver notwithstanding, Pace's claims are unpersuasive. Although most of Pace's criminal record predates 2008, his most recent conviction—for misdemeanor possession of marijuana—occurred in 2017. Therefore, Pace lacked "a substantial period" of crime-free living. *See* Ind. Code § 35-38-1-7.1(b)(6). Also, Pace's act of attempted arson threatened serious harm to persons and property, meaning it does not qualify as a mitigator under Indiana Code § 35-38-1-7.1(b)(1). The harm or damage was not realized only because a bystander promptly reported Pace's criminal conduct and police officers quickly extinguished the fire before it could spread.

[8] We also reject Pace's claim that the trial court, which cited Pace's mental illness in its sentencing statement, did not "consider the severity of his mental health diagnosis." Appellant's Br., p. 6. Pace's argument amounts to a claim that the trial court should have given greater weight to his mental illness. "Because the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence . . . a trial court cannot now be said to have abused its discretion in failing to 'properly weigh' such factors." *Anglemyer*, 868 N.E.2d at 492. The trial court did not abuse its discretion in sentencing Pace.

II. No Inappropriate Sentence

[9] Under Indiana Appellate Rule 7(B), we may "revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." We conduct Rule 7(B) review with "substantial deference" to the trial court because the "principal role of [our] review is to attempt to leaven the outliers, and not to achieve a perceived correct sentence." *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014) (quotations and citations omitted).

[10] When assessing whether a sentence is inappropriate, we first consider the statutory range established for the class of the offense. *Croy v. State*, 953 N.E.2d 660, 664 (Ind. Ct. App. 2011). The sentencing range for attempted arson, a Level 4 felony, is two to twelve years imprisonment, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5. The trial court thus imposed the advisory sentence.

[1] "[R]egarding the nature of the offense, the advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Anglemyer*, 868 N.E.2d at 494. Pace repeats his claim that the lack of injury and property damage were mitigating circumstances justifying a lesser sentence—a claim that we have already rejected. Pace also points to his guilty plea. But the record reflects that Pace pled guilty mid-trial after arriving late to court. This, combined with his counsel's arguments when seeking the mistrial,

implies his choice was pragmatic and likely intended to avoid the jury prejudice that Pace perceived his trial tardiness created.

[2] Pace's character also does not justify sentencing revision. "The character of the offender is found in what we learn of the offender's life and conduct." *Croy,* 953 N.E.2d at 664. Pace has been diagnosed with bipolar disorder and receives disability payments due to his mental illness. But at the time of this offense, Pace had a criminal history spanning more than three decades and consisting of more than a half dozen felony and misdemeanor offenses. His prior convictions largely are drug- or alcohol-related. Given all these circumstances, we conclude Pace's advisory sentence was not inappropriate under Rule 7(B) in light of the nature of the offender and the character of the offender.

[3] We affirm the trial court's sentencing judgment.

Bailey, J., and Brown, J., concur.