MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Christopher P. Phillips
Phillips Law Office, P.C.
Monticello, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Kelly Loy
Assistant Section Chief of Criminal Appeals

Ian McLean
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Eberaia D. Fields,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 6, 2022

Court of Appeals Case No.
21A-CR-2469

Appeal from the
Cass Superior Court

The Honorable
Douglas A. Tate, Special Judge

Trial Court Cause Nos.
09D01-2104-F6-79
09D01-1802-F6-64

Molter, Judge.

[1] In 2018, Eberaia Fields was charged with operating a vehicle while intoxicated as a Level 6 felony, operating a vehicle while intoxicated endangering a person as a Level 6 felony, and resisting law enforcement as a Class A misdemeanor. The State also alleged he was a habitual vehicular substance offender ("HVSO"). Three years later, in a different incident, the State charged Fields with operating a vehicle while intoxicated with a prior conviction within seven years as a Level 6 felony and resisting law enforcement as a Level 6 felony. The State alleged an HVSO enhancement for that incident as well. For dispositional purposes, the trial court combined the two cases, and after Fields pleaded guilty, the trial court sentenced him to a total of ten years of incarceration.

[2] Fields now appeals his sentences. He argues the trial court abused its discretion by not "offsetting" his concurrent HVSO enhancements here against his earlier HVSO sentence in a prior Kosciusko Superior Court case; by failing to consider certain mitigators; and by improperly considering his criminal history as an aggravator. We disagree and therefore affirm as to these issues. However, the trial court improperly treated Fields's HVSO enhancements as separate sentences, and we therefore reverse in part with instructions to correct that portion of the sentencing order.

Facts and Procedural History

[3] In February 2018, the State commenced Cause Number 09D01-1802-F6-64 ("F6-64"). It charged Fields with operating a vehicle while intoxicated as a Level 6 felony, operating a vehicle while intoxicated endangering a person as a

Level 6 felony, and resisting law enforcement as a Class A misdemeanor. Fields also received an HVSO enhancement. Then, in April 2021, the State initiated Cause Number 09D01-2104-F6-79 ("F6-79"), charging Fields with operating a vehicle while intoxicated with a prior conviction within seven years as a Level 6 felony and resisting law enforcement as a Level 6 felony. Also, the State alleged that Fields was an HVSO. For the purposes of disposition, the trial court combined these two cases.

[4] At the combined plea and sentencing hearing, the court dismissed the operating a vehicle while intoxicated endangering a person charge from F6-64. Then, in both F6-64 and F6-79, Fields pleaded guilty to the remaining charges. For F6-64, the trial court sentenced Fields to two years for operating a vehicle while intoxicated and one year for the resisting law enforcement conviction. It enhanced the convictions by six years due to Fields's HVSO status.

[5] Then, as to F6-79, the trial court sentenced Fields to two years for operating a vehicle while intoxicated with a prior conviction within seven years and two years for resisting law enforcement, which were also enhanced by six years due to Fields being an HVSO. It also ordered the total sentence for F6-79 to run concurrently to the total sentence for F6-64 so that the total period of incarceration would be ten years. Fields now appeals.

Discussion and Decision

I. Kosciusko County Sentence

[6] Fields first argues the trial court erred by not "offsetting" his concurrent HVSO enhancements in F6-64 and F6-79 against his earlier HVSO sentence in a Kosciusko Superior Court case under Cause Number 43D03-1510-F6-642 ("F6-642"). Although the record here is not clear as to what the Kosciusko Superior Court ordered in F6-642, it appears it may have directed that Fields's HVSO enhancement there must be served consecutively to his sentence in F6-64 once that later sentence was imposed. Appellant's App. Vol. 4 at 35–36; Tr. Vol. 2 at 36–40. But since F6-64 had not yet progressed to disposition, the Kosciusko Superior Court could not order the sentences to run consecutively. *See Reaves v. State*, 586 N.E.2d 847, 852 (Ind. 1992) (stating that a trial court may not withhold judgment, indefinitely postpone sentencing, or impose sentences that begin *in futuro*). Regardless, that alleged error from an earlier, separate sentencing is not before us in the appeal of this case.[1] Instead, Fields's remedy lies in the Kosciusko Superior Court.

[1] The trial court lacked the authority to review the Kosciusko Superior Court's alleged error. *See State v. Downey*, 14 N.E.3d 812, 815 (Ind. Ct. App. 2014) ("The rule is quite well settled, that one court cannot control the execution of the orders or process of any other court of equal jurisdiction." (quotation marks omitted)), *trans. denied*. Therefore, under Indiana Appellate Rules 5(A) and 9(A)(1), the issue is not before us for our review.

II. Abuse of Discretion[2]

[7] Trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the recitation includes a finding of aggravating or mitigating factors, then the statement must identify all significant mitigating and aggravating factors and explain why each factor has been determined to be mitigating or aggravating. *Id.* Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Id.* An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and [factors] before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.*

[8] A trial court may abuse its discretion by entering a sentencing statement which omits mitigating factors that are clearly supported by the record and advanced for consideration. *Id.* at 490–91. Because the trial court no longer has any

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[2] We note that Fields seems to conflate two separate sentencing standards: whether the trial court abused its discretion in identifying mitigating and aggravating factors and whether his sentence is inappropriate pursuant to Indiana Appellate Rule 7. "As our Supreme Court has made clear, inappropriate sentence and abuse of discretion claims are to be analyzed separately." *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). Accordingly, "an inappropriate sentence analysis does not involve an argument that the trial court abused its discretion in sentencing the defendant." *Id.* While Fields uses some language typical of an inappropriate sentence claim, he has failed to develop his argument or provide citations to authorities. *See* Ind. Appellate Rule 46(A)(8)(a). As such, he has waived this claim for our review. *See Shepherd v. Truex*, 819 N.E.2d 457, 483 (Ind. Ct. App. 2004) (concluding appellant waived claim by failing to present cogent argument).

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." *Id.* at 491. Once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating or mitigating factors, it may then "impose any sentence that is . . . authorized by statute; and . . . permissible under the Constitution of the State of Indiana." Ind. Code § 35-38-1-7.1(d).

A. Mitigating Factors

[9] Fields argues the trial court abused its discretion when sentencing him because it failed to consider his efforts to rehabilitate, acceptance of responsibility and remorse, and strong support system as mitigating factors.

[10] The finding of mitigating factors is not mandatory and rests within the trial court's discretion. *Storey v. State*, 875 N.E.2d 243, 252 (Ind. Ct. App. 2007), *trans. denied*. "The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor." *Id.* Additionally, the trial court is not required to attribute the same weight to proffered mitigating factors as the defendant does. *Id.* Nonetheless, the trial court may not ignore factors in the record that would mitigate an offense. *Id.* To fail to find mitigating factors which are clearly supported by the record may imply the trial court did not consider those factors. *Id.* To prevail upon appeal, the defendant must establish a mitigating factor is both significant and clearly supported by the record. *Id.*

[11] Fields, in one sentence, asserts that the trial court did not consider three mitigating factors—his efforts to rehabilitate, acceptance of responsibility and remorse, and strong support system. While he summarily states these factors are supported by the record, he offers no further argument as to how they are significant in light of the sentence the trial court imposed. Therefore, this argument is waived under Indiana Appellate Rule 46(A)(8)(a), which requires that contentions in an appellant's brief be supported by developed reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal. *See Shepherd v. Truex*, 819 N.E.2d 457, 483 (Ind. Ct. App. 2004) (concluding appellant waived claim by failing to present cogent argument).

[12] Regardless, Fields's argument fails. First, the record demonstrates that Fields's family and social support were assessed as moderate—not high or strong. Tr. at 50; Appellant's Conf. App. Vol. 2 at 77. Next, it is not enough that Fields's efforts to rehabilitate and his acceptance of responsibility and remorse were supported by the record at sentencing. Tr. 12, 38, 75–76. Instead, to prevail upon appeal, the defendant must also establish that the mitigating evidence is significant. *Storey*, 875 N.E.2d at 252. Fields has not done so here.

B. Aggravating Factors

[13] Fields also argues the trial court abused its discretion when sentencing him because the aggravating factors the trial court identified—Fields's prior convictions—were "inherently . . . included in the charges [pleaded] by [Fields] and . . . should not have been levied against [him] as aggravating factors." Appellant's Br. at 14. In raising this argument, Fields emphasizes that he

admitted to operating a vehicle while intoxicated with a *prior* conviction within seven years and being an HVSO. But he does not cite to any authority or offer any detailed explanation to support this argument. Consequently, as with his argument regarding mitigating factors, he has waived this argument under Indiana Appellate Rule 46(A)(8)(a). *See Shepherd*, 819 N.E.2d at 483 (Ind. Ct. App. 2004).

[14] Waiver notwithstanding, we do not find Fields's argument persuasive. "The significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Maffett v. State*, 113 N.E.3d 278, 286 (Ind. Ct. App. 2018). At sentencing, the trial court emphasized that Fields has an extensive criminal history. Specifically, Fields has thirty-seven misdemeanor convictions and six felony convictions—many of which are alcohol-related or driving violations. Also, to the extent that Fields complains his criminal history was used both to enhance the convictions at issue and as an aggravating factor, that is not improper. In *Pedraza v. State*, 887 N.E.2d 77, 80–81 (Ind. 2008), our Supreme Court concluded that because trial courts no longer "enhance" sentences under the advisory statutory scheme, using a material element of a crime as an aggravating factor—here, a prior operating a vehicle while intoxicated conviction—is "no longer an inappropriate double enhancement." *Id.* at 80.

[15] Based upon our review of the record, we cannot say that the trial court abused its discretion in considering Fields's criminal history as an aggravating factor. Moreover, we note that we do not find Fields's brief argument that the trial

court "unreasonabl[y]" balanced the mitigators and aggravators persuasive. Appellant's Br. at 14. Because a trial court is no longer required to identify and weigh mitigators and aggravators upon rendering a sentence and may, instead, impose any sentence authorized by law after it enters its sentencing statement, "the relative weight ascribed by the trial court to any" mitigators or aggravators "is no longer subject to our review." *Salhab v. State*, 153 N.E.3d 298, 304 (Ind. Ct. App. 2020).

[16] In sum, we find that the trial court did not abuse its discretion in sentencing Fields.

III. Sentencing Order

[17] As the State acknowledges, remand is necessary for a different reason. Appellee's Br. at 17. "[I]t is well-settled that a habitual offender finding does not constitute a separate crime nor result in a separate sentence, but rather results in a sentence enhancement imposed upon the conviction of a subsequent felony." *Weekly v. State*, 105 N.E.3d 1133, 1139 (Ind. Ct. App. 2018) (quotations marks omitted and alterations adopted), *trans. denied*. Here, the trial court's sentencing order mistakenly treats Fields's HVSO enhancements in F6-64 and F6-79 as separate sentences. Appellant's App. Vol. 2 at 110, 133; Appellant's App. Vol. 4 at 71, 93. We therefore reverse the portions of the sentencing orders directing that Fields's HVSO enhancements run as separate, consecutive sentences to his underlying felony convictions and remand with instructions to correct the order consistent with this opinion.

[18] Affirmed in part, reversed in part, and remanded with instructions.

Mathias, J., and Brown, J., concur.