MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Anthony William Harman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 1, 2023

Court of Appeals Case No. 22A-CR-2285

Appeal from the Noble Circuit Court

The Honorable Michael J. Kramer, Judge

Trial Court Cause Nos.
57C01-1909-F6-289
57C01-1911-F6-353
57C01-2108-F5-54

Memorandum Decision by Judge Robb
Judges Crone and Kenworthy concur.

Robb, Judge.

Case Summary and Issue

[1] Anthony Harman pleaded guilty to domestic battery as a Level 6 felony. The trial court then sentenced Harman to two and one-half years to be executed in the Indiana Department of Correction ("DOC"). Harman now appeals, raising one issue for our review which we restate as whether the trial court abused its discretion sentencing Harman. Concluding the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

[2] Harman was in a relationship with S.W. On or about August 7, 2021, Harman bit S.W. in the face and pushed her. *See* Appellant's Appendix, Volume II at 24. On August 9, the State charged Harman with domestic battery, a Level 5 felony. The State later amended the charging information to add a count of criminal trespass as a Class A misdemeanor. On August 1, 2022, Harman pleaded guilty to the lesser included offense of domestic battery as a Level 6 felony. In exchange for Harman's guilty plea, the State agreed to dismiss Harman's criminal trespass charge.

[3] When sentencing Harman, the trial court found "no Mitigating Circumstances[.]" *Id.* at 90. Further, "the Aggravating Circumstances considered by the Court were the Defendant[']s lengthy criminal record, [he] was currently on probation at the time the offense was committed[,] and violations [were] committed while on community corrects [sic] and probation."

Id. The trial court sentenced Harman to two and one-half years to be served in the DOC.[1] Harman now appeals.

Discussion and Decision

I. Standard of Review

[4] Sentencing decisions rest within the trial court's discretion and are afforded considerable deference. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). Accordingly, we review sentencing decisions 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 (2007). A trial court abuses its discretion when its 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.*

[5] There are several ways in which a trial court can abuse its discretion in sentencing:

> (1) failing to enter a sentencing statement, (2) entering a sentencing statement that explains reasons for imposing the sentence but the record does not support the reasons, (3) the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or (4) the reasons

[1] Harman's sentence runs consecutively to his sentences in cause numbers 57C01-1909-F6-289 and 57C01-1911-F6-353. At the time Harman was charged in this case he was on probation under these two causes. Harman's probation was revoked, and he was sentenced in all three causes simultaneously.

> given in the sentencing statement are improper as a matter of law.

Phelps v. State, 24 N.E.3d 525, 527 (Ind. Ct. App. 2015). 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." *Guzman v. State*, 985 N.E.2d 1125, 1131 (Ind. Ct. App. 2013) (quoting *Anglemyer*, 868 N.E.2d at 491). "[A]n allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant." *Anglemyer*, 875 N.E.2d at 220-21. The identification or omission of reasons provided for imposing a sentence are reviewable on appeal for an abuse of discretion; however, the weight given to those reasons is not subject to appellate review. *Weedman v. State, 21 N.E.3d 873, 893 (Ind. Ct. App. 2014), trans. denied.*

II. Abuse of Sentencing Discretion

[6] Harman contends the trial court abused its discretion by failing to recognize his guilty plea as a mitigating factor. Specifically, Harman argues that he "accepted responsibility for his criminal conduct and pleaded guilty without a plea agreement." Appellant's Brief at 10. As a general rule, a defendant's guilty plea is entitled to some mitigating weight:

> Our courts have long held that a defendant who pleads guilty deserves to have some mitigating weight extended to

> the guilty plea in return. A guilty plea demonstrates a defendant's acceptance of responsibility for the crime and at least partially confirms the mitigating evidence regarding his character. *Scheckel v. State*, 655 N.E.2d 506, 511 (Ind. 1995); *see also Williams v. State*, 430 N.E.2d 759, 764 (Ind. 1982) ("[A] defendant who willingly enters a plea of guilty has extended a substantial benefit to the state and deserves to have a substantial benefit extended to him in return.").

Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005) (some internal citations omitted).

[7] However, whether a trial court should cite a guilty plea as a mitigating factor "is necessarily fact sensitive, and not every plea of guilty is a significant mitigating circumstance that must be credited by a trial court." *Cherry v. State*, 772 N.E.2d 433, 436-37 (Ind. Ct. App. 2002) (quoting *Trueblood v. State*, 715 N.E.2d 1242, 1257 (Ind. 1999)), *trans. denied*. For example, "a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea[.]" *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied.*

[8] Harman cites *Cotto v. State*, 829 N.E.2d 520 (Ind. 2005), contending "he was entitled to have the trial court recognize his guilty plea as a mitigating factor." Appellant's Br. at 10. In *Cotto*, the trial court determined the defendant did not obtain a benefit from pleading guilty because even though the State dismissed multiple charges, "[t]he State's decision to dismiss apparently was done for its own benefit and not for the benefit" of the defendant. 829 N.E.2d at 525 (explaining the State moved to dismiss "in the interests of simplifying the case for the jury and judicial economy to speed the resolution of the charges" and

not to induce a guilty plea). We find *Cotto* distinguishable from the case at hand. Here, in exchange for Harman's guilty plea the State agreed to amend the domestic battery charge from a Level 5 felony to a Level 6 felony.[2] Further, the State agreed to dismiss Harman's Class A misdemeanor criminal trespass charge. Thus, Harman received a substantial benefit from his guilty plea.

[9] Under these circumstances, we cannot say the trial court abused its discretion by failing to consider the guilty plea as a mitigating circumstance.

Conclusion

[10] We conclude the trial court did not abuse its discretion in sentencing Harman. Accordingly, we affirm.

[11] Affirmed.

Crone, J., and Kenworthy, J., concur.

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[2] A person who commits a Level 5 felony shall be imprisoned for a fixed term of between one and six years with an advisory sentence of three years. Ind. Code § 35-50-2-6(b). Conversely, a person who commits a Level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(b).