

Walter Williams appeals his fifteen-year sentence for aggravated battery as a Class B felony,¹ and attempted battery as a Class C felony.² We affirm.

FACTS AND PROCEDURAL HISTORY

On November 2, 2004, Williams fired a .40 caliber handgun at Marquette Hall³ and David Taylor, who were in a car. His shots missed Taylor but hit Hall in the cheek, resulting in the loss of several teeth. The original charges filed against Williams included attempted murder, aggravated battery, battery, and criminal recklessness. After various delays, trial was set for March 27, 2006. On February 21, 2006, Williams agreed to plead guilty to aggravated battery and attempted battery in exchange for dismissal of the other charges. Sentencing would be argued to the court with a maximum sentence of fifteen years.

The sentencing court found Williams' guilty plea and acceptance of responsibility a mitigator but noted he had "received the benefit of that as reflected in the terms of the plea agreement." (Tr. at 103.) The court found two aggravators: prior criminal history consisting of three misdemeanor and two felony convictions, and that he had "previously violated the terms and conditions of probation on three of the four occasions that he's been given that opportunity." (*Id.*) The sentencing court found "the aggravating factors standing alone in and of themselves outweigh the mitigating factor." (*Id.*) It sentenced Williams to fifteen years for aggravated battery and six years for attempted battery. Pursuant to the plea agreement, the sentences were ordered served concurrently.

¹ Ind. Code § 35-42-2-1.5.

² Ind. Code § 35-42-2-1(a)(3); Ind. Code § 35-41-5-1.

³ Hall was Williams' former girlfriend and the mother of his daughter.

DISCUSSION AND DECISION

Ind. Appellate Rule 46(A)(8) requires that the appellant support each contention with argument, including citations to legal authorities, statutes, and the record for support. Failure to present cogent argument constitutes waiver of an issue for appellate review. *Hollowell v. State*, 707 N.E.2d 1014, 1025 (Ind. Ct. App. 1999).

Other than a recitation of the standard of review, the entirety of Williams' argument follows:

At his sentencing hearing, Williams apologized to the victim and expressed remorse for his actions which caused her injury. There was also evidence that he had spoken with and written to [the victim] following the incident and told her that he was sorry. In spite of this fact, the trial court failed to identify [sic] his remorse as a mitigating circumstance. As the trial court failed to recognize this mitigating circumstance when sentencing Williams, his sentence should be corrected.

(Br. of the Appellant at 5.) As counsel provides neither authority nor cogent argument to support this claim, this issue is waived.

Waiver notwithstanding, we conclude the trial court properly sentenced Williams.

We begin by noting Williams pled guilty in 2006, but committed his offenses in 2004. In 2005, the legislature amended Indiana's sentencing scheme in light of *Blakely v. Washington*, 542 U.S. 296 (2004) and *Smylie v. State*, 823 N.E.2d 679 (Ind. 2005), *cert. denied* --- U.S. ---, 126 S.Ct. 545 (2006). Because the 2005 amendments to the sentencing scheme may not be applied retroactively, *see Weaver v. State*, 845 N.E.2d

1066, 1072 (Ind. Ct. App. 2006), *trans. denied* 855 N.E.2d 1011 (Ind. 2006), we will apply the sentencing scheme in effect at the time Williams committed the offenses.⁴

Sentencing decisions are within the trial court's discretion and will be reversed only for an abuse of discretion. *Hayden v. State*, 830 N.E.2d 923, 928 (Ind. Ct. App. 2005), *trans. denied* 841 N.E.2d 184 (Ind. 2005). When considering the appropriateness of the sentence for the crime committed, courts should initially focus on the presumptive penalties. *Id.* Trial courts may then consider deviation from this presumptive sentence based on a balancing of factors, which must be considered pursuant to Ind. Code § 35-38-1-7.1(a) (2004), together with any discretionary aggravating and mitigating factors found to exist. *Id.* The mandatory factors include the risk the person will commit another crime, the nature and circumstances of the crime committed, and the prior criminal record, character, and condition of the person. Ind. Code § 35-38-1-7.1(a) (2004).

In order for a trial court to impose enhanced sentences, it must: 1) identify the significant aggravating factors and mitigating factors; 2) relate the specific facts and reasons that the court found to those aggravators and mitigators; and 3) demonstrate that the court has balanced the aggravators with the mitigators. *Hayden*, 830 N.E.2d at 928. A single aggravating factor is sufficient to support the imposition of an enhanced sentence. *Id.* We examine both the written sentencing order and the court's comments at the sentencing hearing to determine whether the trial court adequately explained the reasons for the sentence. *Loyd v. State*, 787 N.E.2d 953, 960 (Ind. Ct. App. 2003).

⁴ Because Williams consented to judicial factfinding, *Blakely* is not otherwise implicated.

At the time Williams committed his offenses, the penalty for a Class B felony was a fixed term of ten years, with not more than ten years added for aggravating circumstances or not more than four years subtracted for mitigating circumstances. Ind. Code § 35-50-2-5 (2004). A Class C felony was punishable by a fixed term of four years, with not more than four years added for aggravating circumstances and not more than two years subtracted for mitigating circumstances. Ind. Code § 38-50-2-6(a) (2004).

The sentencing court considered each of the relevant factors required by statute.⁵ The relationship between Williams and Hall was volatile and increased the risk Williams would reoffend: “So if you don’t end this relationship, and I mean permanently, you’re going to be back here facing murder charges, because you can’t deal with that.”⁶ (Tr. at 101.) The sentencing court noted the nature and circumstances of the crime committed were set forth in the stipulated factual basis.⁷ The court discussed Williams’ criminal record, his history of probation violations, his alcoholism, and the choices he has made with respect to Hall,⁸ his daughter, alcohol, and guns.

The sentencing court found two aggravating factors: Williams’ inability to abide by the rules and conditions of his probation, and his prior criminal record. His criminal record indicates four of his five prior convictions (two felonies and two misdemeanors)

⁵ The sentencing court is not required to specifically address and discuss each of the mandatory factors listed in the statute. *Jones v. State*, 614 N.E.2d 936, 937 (Ind. 1993).

⁶ The sentencing court commented Williams had reacted in “anger and disgust,” (Tr. at 101), when Taylor testified he had been dating Hall for three years.

⁷ Williams “pointed and discharged a .40-caliber handgun in the direction of” the victims’ vehicle while they were in it. (Appendix of Appellee at 4.) As a result, the mother of his child was shot through the cheek, nearly died, and suffered serious permanent disfigurement including the loss of teeth.

⁸ For example, Williams continued in an “abusive” and “unhealthy” relationship with Hall despite thinking she “is a crazy woman.” (Tr. at 100.)

were for driving while intoxicated, his fifth conviction involved a gun, and he “failed to successfully complete probation three of the four times he’s been given that opportunity.” (*Id.* at 102.)

The court found Williams’ plea of guilty and acceptance of responsibility was a mitigating factor but noted he had “received the benefit of that as reflected in the terms of the plea agreement.”⁹ (*Id.* at 103.) It then balanced the mitigators and aggravators and determined each of the aggravators outweighed the mitigating factor. The trial court did not abuse its discretion in sentencing Williams to enhanced sentences of fifteen years for aggravated battery and six years for attempted battery.

CONCLUSION

Because counsel provided neither authority nor cogent argument to support Williams’ claim of sentencing error, this claim is waived. Waiver notwithstanding, the sentencing court properly considered and balanced mandatory, aggravating, and mitigating factors in sentencing Williams. Accordingly, we affirm.

Affirmed.

MATHIAS, J. and NAJAM, J. concur.

⁹ Indiana courts have long held that a defendant who pleads guilty is entitled to receive some benefit in return. *Williams v. State*, 430 N.E.2d 759, 764 (Ind. 1982), *appeal dismissed* 459 U.S. 808 (1982), *reh’g denied* 459 U.S. 1059 (1982). However, a guilty plea does not automatically amount to a significant mitigating factor, particularly if the defendant has already received a substantial benefit in exchange for pleading guilty. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999).

Williams was originally charged with two Class A felonies, a Class B felony, a Class C felony and a Class D felony. If convicted of the Class A felonies, Williams could have received between twenty and 100 years. Under the agreement, Williams pled guilty to one Class B felony and one Class C felony, with a maximum sentence of fifteen years.