

Appellant-defendant Kevin Simons appeals the three-year sentence imposed by the trial court after Simons was convicted of Auto Theft,¹ a class D felony. Simons argued that the trial court erroneously weighed aggravating and mitigating factors. Finding no error, we affirm.

FACTS

On November 15, 2007, Simons stole Phil Graf's truck, driving Graf's truck away from the parking lot of a convenience store after Graf had entered the store. Graf's infant child was inside Graf's vehicle at the time. On November 19, 2007, the State charged Simons with class D felony auto theft and class D felony possession of a controlled substance. The State subsequently dismissed the possession charge. On May 20, 2008, Simons was found guilty by a jury of class D felony auto theft.

On June 30, 2008, the trial court held a sentencing hearing. In its oral sentencing statement, the trial court made the following comments:

Mr. Simmons [sic], you do have a record. This is non-suspendable [sic], so, in any case, the Court's required to send you to jail. On top of everything else, you know, as I look through this case, there are other charges that could have been filed that weren't. It's obvious you were driving, and you already had a lifetime suspension, so they could have filed a C felony, which carries up to eight years as opposed to three years, [which is] the maximum that's in this case. In addition, there were some aggravating circumstances. When you took that truck, there was an infant in the car. That certainly makes this—elevates this to a more serious incident than it would have been otherwise. And because of that, the Court's going to impose 18 months to the DOC and add to that, for aggravating circumstances, based upon both your prior record

¹ Ind. Code § 35-43-4-2.5(b).

of multiple felony convictions, and on the fact that there was an infant in this vehicle, an[] additional 18 months for a total of three years.

Appellant's App. p. 16. Simons now appeals.

DISCUSSION AND DECISION

Simons's sole argument on appeal is that the trial court erred by weighing aggravating and mitigating circumstances. In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (2007), our Supreme Court held that trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. 868 N.E.2d at 490. If the recitation includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. We review sentencing decisions for an abuse of discretion. Id. A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. Id. at 490-91.

The Anglemyer court also cautioned that, "[b]ecause 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.” Id. at 491. Thus, Simons’s sole argument is no longer cognizable.

Giving Simons the benefit of the doubt, he also seems to contend that the trial court abused its discretion by overlooking three mitigating factors. Initially, we observe that Simons did not ask that the trial court consider these mitigators at the sentencing hearing; consequently, he has waived the issue. See id. at 492 (holding that “the trial court does not abuse its discretion in failing to consider a mitigating factor that was not raised at sentencing”).

Waiver notwithstanding, Simons first points out his honorable military service. We recognize that Simons was honorably discharged from the United States Army Reserves and commend him for his service to this nation, but military service is not necessarily a mitigating factor and Simons does not explain why it should be so in this case. See Forgey v. State, 886 N.E.2d 16, 23 (Ind. Ct. App. 2008) (finding that trial court did not abuse its discretion by declining to consider the defendant’s honorable military service as a mitigator). Smith also argues that the trial court should have found his good behavior and attainment of his G.E.D. and other education while incarcerated to be mitigating circumstances. Yet again, however, while commendable, these circumstances are not necessarily mitigating and Simons does not explain why they should have been herein. See Davis v. State, 835 N.E.2d 1102, 1116 (Ind. Ct. App. 2005) (concluding that the trial court did not abuse its discretion by rejecting the proffered mitigating factors of attainment of G.E.D. and status as a “model” prisoner).

Therefore, we find that the trial court did not abuse its discretion by failing to find these mitigators.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.