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**IN THE  
COURT OF APPEALS OF INDIANA**

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MICHAEL NELSON, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 45A04-0811-CR-656  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Salvador Vasquez, Judge  
Cause No. 45G01-0802-FC-31

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**May 18, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

Michael Nelson appeals his sentence following his conviction for Child Exploitation, a Class C felony, pursuant to a plea agreement. He presents a single issue for our review, namely, whether the trial court abused its discretion when it sentenced him.<sup>1</sup>

We affirm.

## FACTS AND PROCEDURAL HISTORY

On August 29, 2008, Nelson pleaded guilty to child exploitation, a Class C felony. His plea agreement provided that his sentence would be capped at five years. At sentencing, the trial court identified the following aggravators: Nelson's criminal history, including eight misdemeanor convictions and a violation of probation; prior leniency by criminal courts without deterrent effect; Nelson violated an order of protection with regard to his victim in the instant offense; and Nelson's character is "highly manipulative and predatory." Appellant's App. at 25. The trial court identified Nelson's guilty plea and admission of responsibility as mitigating circumstances. The trial court found that "each aggravating factor, standing alone, outweighs any mitigating factor." *Id.* And the trial court sentenced Nelson to five years executed. This appeal ensued.

## DISCUSSION AND DECISION

Nelson contends that the trial court abused its discretion when it sentenced him. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490

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<sup>1</sup> Nelson mentions Indiana Appellate Rule 7(B) in his brief, but he does not make cogent argument in support of revision of his sentence pursuant to that Rule. Accordingly, the issue is waived.

(Ind. 2007), clarified on other grounds on reh'g, 875 N.E.2d 218 (Ind. 2007). “An abuse of discretion occurs if the 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. (quotation omitted).

One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. 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.

Id. at 490-91.

Nelson first contends that the trial court abused its discretion when it did not assess more mitigating weight to his guilty plea. But the relative weight or value assignable to a mitigator is not subject to review for abuse of discretion. Id. at 491. As such, Nelson cannot prevail on this issue.

Nelson also contends that the trial court “failed to identify in its sentencing order at least three significant and legitimate mitigating factors: 1. Nelson had four children; 2. He had health issues, including diabetes; and 3. He had expressed remorse for his actions.” Brief of Appellant at 6. But Nelson does not support that contention with cogent argument. As such, the issue is waived. Waiver notwithstanding, it is well settled that the finding of mitigating circumstances is within the discretion of the trial court. Hackett v. State, 716 N.E.2d 1273, 1277 (Ind. 1999). The trial court is not obliged to explain why it did not find a factor to be significantly mitigating. Chambliss v. State, 746

N.E.2d 73, 78 (Ind. 2001). Specifically, “[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 both significant and clearly supported by the record.” Anglemyer, 868 N.E.2d at 493.

First, with regard to his children, Nelson did not proffer that circumstance as a mitigator to the trial court, so the issue is waived. See Creekmore v. State, 853 N.E.2d 523, 530 (Ind. Ct. App. 2006) (noting if defendant fails to advance mitigator at sentencing, defendant is precluded from asserting it for first time on appeal). Second, Nelson does not explain to this Court why his health problems should be considered mitigating circumstances. Finally, Nelson’s expression of remorse at sentencing was equivocal. Nelson has not demonstrated that any of the proffered mitigators were both significant and clearly supported by the record.

The trial court did not abuse its discretion when it identified aggravators and mitigators and sentenced Nelson to five years executed. Accordingly, we affirm.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.