

STATEMENT OF THE CASE

James Michael Keeton appeals his sentence following his convictions for two counts of Child Molesting, as Class B felonies, 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.¹

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 15, 2008, Keeton pleaded guilty as charged to two counts of child molesting, as Class B felonies. The factual basis for the plea was that in April and May of 2008, when Keeton was eighteen years old, he had sexual intercourse with T.C., age twelve, and H.W., age thirteen. Keeton, a distant relative of T.C.'s father's fiancée, was living with T.C. and H.W. Keeton's plea agreement left sentencing open to the trial court's discretion, but required the sentences to be served concurrently.

At sentencing, the trial court identified the following aggravators: Keeton's criminal history, including four juvenile adjudications for battery, public indecency, criminal trespass, and arson, and one conviction for domestic battery, as a Class A misdemeanor; and that Keeton "took advantage of [the] situation by residing at [the victims'] residence." Appellant's App. at 10. The trial court identified Keeton's guilty plea as a mitigating circumstance and sentenced Keeton to twenty years on each count, to run concurrently. This appeal ensued.

¹ Keeton mentions Indiana Appellate Rule 7(B), but he does not make a cogent argument on that issue. The issue is waived.

DISCUSSION AND DECISION

Keeton 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 (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.

Keeton 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, Keeton cannot prevail on this issue.

Keeton also contends that the trial court should have assigned his criminal history mitigating weight instead of aggravating weight. In particular, Keeton maintains that he has “no felony convictions as an adult” and has only a “minimal juvenile history.” Brief of Appellant at 11. But Keeton was only nineteen years old at the time of sentencing, and

he had four juvenile adjudications and one misdemeanor conviction for domestic battery. Keeton has not demonstrated that the trial court abused its discretion when it found his criminal history to be an aggravator. Moreover, Keeton did not proffer his criminal history as a mitigator to the trial court, so the issue is waived on appeal. See Simms v. State, 791 N.E.2d 225, 233 (Ind. Ct. App. 2003) (holding defendant precluded from advancing proffered mitigator for first time on appeal).

Finally, Keeton asserts that the trial court should have identified his remorse as a mitigating factor. In support of this issue, Keeton directs us to the following two sentences in the transcript: “I just want to say that I’m sorry. I’d like to have a chance to try to fix what I’ve done.” Transcript at 14. This court gives substantial deference to a trial court’s evaluation of a defendant’s remorse. See Allen v. State, 875 N.E.2d 783, 788 (Ind. Ct. App. 2007). The trial court has the ability to directly observe the defendant and listen to the tenor of his voice and is, therefore, in the best position to determine whether the remorse is genuine. See id. Keeton’s expression of remorse at sentencing was brief, and he does not direct us to any additional evidence that he made the trial court aware of any additional expressions of remorse. We cannot say that the trial court abused its discretion when it did not identify Keeton’s remorse as a mitigator.

The range of sentences for a Class B felony is six to twenty years. Here, because Keeton committed separate and distinct criminal acts against T.C. and H.W., the trial court could have imposed consecutive twenty-year sentences for a total sentence of forty years. See Sanquenetti v. State, 727 N.E.2d 437, 443 (Ind. 2000) (holding consecutive sentences warranted where defendant commits multiple separate and distinct criminal

acts). But the terms of Keeton's plea agreement required the trial court to impose concurrent sentences—a substantial benefit to Keeton. Keeton has not demonstrated that the trial court abused its discretion when it sentenced him.

Affirmed.

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